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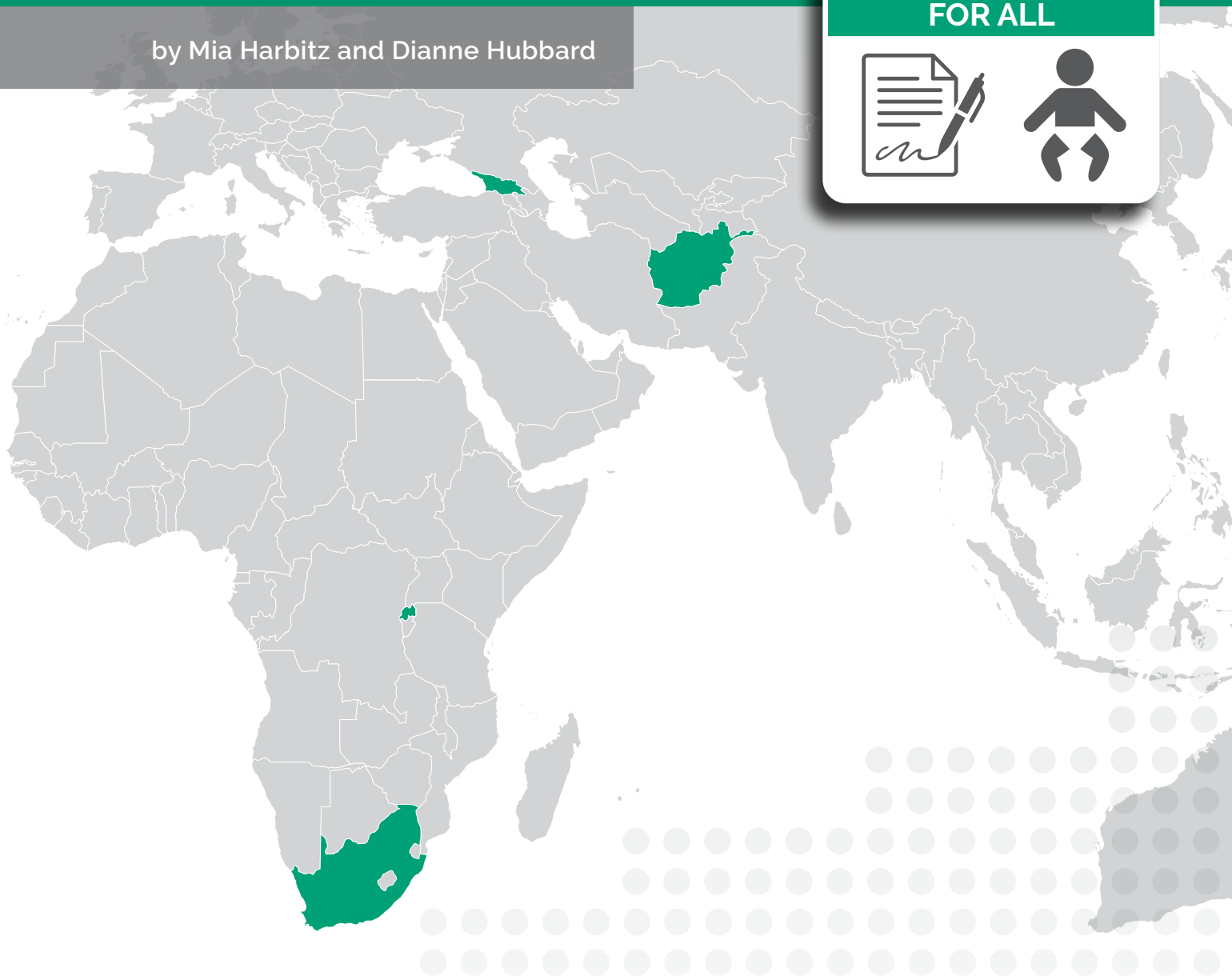
LE CENTRE D'EXCELLENCE
sur les systèmes ESEC

Constructing the Foundations for **Legal Identity** in **Post-Conflict Settings**

by Mia Harbitz and Dianne Hubbard

SDG TARGET 16.9

LEGAL IDENTITY
FOR ALL



Authors' Note

The research was commissioned by the Centre of Excellence for Civil Registration and Vital Statistics (CRVS) Systems at the International Development Research Centre in Ottawa, Canada.

The paper is based on reviews of online resources, published literature and reports, as well as interviews with experts familiar with the civil registration processes in the four countries analyzed: Afghanistan, Georgia, Rwanda, and South Africa. The aim is to make these research findings widely accessible for discussion, debate, and use by the global CRVS community of practice.

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International Development Research Centre
PO Box 8500,
Ottawa, ON Canada
crvs@idrc.ca
www.CRVSystems.ca

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Abstract

Despite mounting evidence of the need for people to have trusted and trustworthy identity credentials, little attention has been paid to the key determinants of an identity management system that establishes a person's unique legal identity and issues reliable official identity credentials. Also overlooked is a country's ability to register and give legal identity to everyone who lives within its borders, regardless of citizenship status.

This paper aims to contribute to the achievement of Target 16.9 under Sustainable Development Goal 16 by analyzing the role of the civil register and the legal underpinnings for identity in four countries: Afghanistan, Georgia, Rwanda, and South Africa. It describes institutional and operational models in each country that support universal registration of births, deaths, and other vital events. Specifically, it describes the legal frameworks for civil registration (sovereign responsibility), institutional and administrative arrangements, registration of undocumented adults, marginalized populations and refugees, and legal and administrative capacity to handle adverse situations. It concludes by noting some areas needing particular attention.

While the four countries are at different stages of maturity of their identity management systems, they are concerned with many of the same issues, such as increasing the coverage of civil registration, improving civil registration statistics, and advancing the efficiency, functionality, and coverage of their national identity management arrangements. Implicitly, the countries are attempting to provide all citizens, residents, and refugees with a legal identity, but in practice some of the countries fall short. The four countries have experienced, or are experiencing, internal conflict of varying degrees, from South Africa's repressive apartheid regime to Afghanistan's ongoing armed struggle, with Rwanda's genocide as a defining moment for reconciliation, and Georgia's latent ethnic frictions. Thus, despite the many differences between these four countries, they are instructive as a spectrum of approaches to identification management in post-conflict settings, with a number of commonalities.

Keywords: Civil registration, governance, identity management, legal identity, citizenship, post-conflict, nationality, personal data protection

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Constructing the Foundations for Legal Identity

The United Nations has proposed the following operational definition of legal identity:

the basic characteristics of an individual's identity. e.g. name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally-recognized identification authority; this system should be linked to the civil registration system to ensure a holistic approach to legal identity from birth to death. Legal identity is retired by the issuance of a death certificate by the civil registration authority upon registration of death.¹

The Sustainable Development Goals (SDGs) approved by the United Nations General Assembly in 2015 are a "plan of action for people, planet and prosperity"² that is meant to give all a better future. They are broader in scope than the previous Millennium Development Goals, which focused on a narrow set of disease-related indicators. SDG 16, for example, is "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."³ Each SDG has a set of targets to be achieved. Target 16.9 under Goal 16 calls on States to "provide legal identity for all, including birth registration."⁴ The SDGs do not provide any definition of legal identity, but reaching this target by 2030 will be an enormous challenge and will demand greater effectiveness and improved capabilities on the part of governments.

Tens of millions of people around the world have no registered legal identity. Based on available data from UNHCR, an estimated 68.5 million people had been forcibly displaced as a result of persecution, conflict, violence, or human rights violations. At least 10 million are stateless, having been denied nationality and its related rights. There are at least 237 million children under age 5 without a birth certificate according to UNICEF. The World Bank estimates that approximately 1 billion people are legally excluded from exercising rights and accessing benefits because they cannot prove their identity. They are the truly invisible among us: without the identity credentials that a legal identity affords, they are unable to fully participate in modern society.

The United Nations Children's Fund (UNICEF) estimates that one in four children under the age of 5, or 166 million children, have not had their births registered.⁵ Many of them live in conflict-affected areas. To achieve SDG Target 16.9, and in light of the UN Statistics Division's definition of legal identity, which is based on the recording of biographic information, it is urgent to develop strategies that will provide undocumented persons with a recognized legal identity. The civil

1 United Nations. 2019. United Nations Strategy for Legal Identity for All: Concept note developed by the United Nations Legal Identity Expert Group, para 12.

unstats.un.org/legal-identity-agenda/documents/UN-Strategy-for-LIA.pdf

2 sdgs.un.org/2030agenda

3 Ibid.

4 Ibid.

5 UNICEF. 2019. Birth Registration for Every Child by 2030: Are We on Track? p. 6.
data.unicef.org/resources/birth-registration-for-every-child-by-2030

registration authority is the starting point for legal identity in most countries, and certainly in the four countries analyzed in this paper.

This paper does not take a stand on the UN definition of legal identity, but merely uses it for lack of a universally agreed upon definition.⁶ None of the four countries studied refer to legal identity in their legislation on civil registration and identification.

Citizenship and legal identity should not be conflated; none of the countries studied limited their identification systems to citizens alone. However, the rules on citizenship are often intertwined with identity and civil registration; the rules on citizenship sometimes serve as an obstacle to securing legal identity, and difficulties in accessing civil registration serve as a barrier to claims of citizenship. The countries in this study (like many others) make citizenship a condition to access important benefits and services. This paper therefore includes a description of the requirements for citizenship in each of the countries examined in order to consider such connections.

Given the large number of people who lack a registered legal identity or credentials that evidence their identity, information technology and digital approaches may be seen as quick solutions to register them. However, national governments increasingly demand a registered legal identity that is anchored in national legislation to access rights, benefits, and civic responsibilities that States afford to citizens and residents. The civil registry (or, in some countries, the population register) is generally the basis for establishing legal identity. The ability to register everyone depends on the legal framework as well as the capacity, management, and functional structure of the agency. The relationship between the civil registry and other governmental institutions, and the acceptance of the identity credential, determines the trustworthiness of the civil registry and the credentials it issues. This can be especially challenging in countries that are emerging from conflict.

This paper summarizes the legal, institutional, and administrative structures that provide the foundation for legal identity and, in turn, the prerequisite for social and financial inclusion. The purpose is to get a better understanding of the operational modalities and models that hinder or enable universal registration of vital events.

The paper examines the experiences of four countries — Afghanistan, Georgia, Rwanda, and South Africa — that have attempted to establish systems to guarantee legal identity for their citizens and those living within their borders. These four countries have, to a greater or lesser degree, had experience with conflict, displaced populations, unregistered children, and adults without documentation. All of them have updated their legal frameworks and view their civil register as an essential public service. In this way they provide valuable lessons in promoting and fostering inclusion in the aftermath of conflict. The choice of countries for study was also influenced by the desire to look at countries in different regions that have grappled with various types of conflict and by the ability to access the relevant laws online in English.

The COVID-19 pandemic added an unforeseen layer of hardship for civil registration authorities around the world. While it is too early to assess the full impact of the pandemic on the

6 For an interesting discussion of approaches to legal identity, see Manby, B. 2021. The Sustainable Development Goals and 'Legal Identity for All': 'First, do no harm.' *World Development*, p. 139.

administration of civil registration and identification systems in the four countries, we have sought to include any available information about their initial responses to it.

Methodology

The paper is based on analysis of publicly available data, relevant websites, literature and reports available online, and interviews with experts who are familiar with the civil registration processes in the four countries. One potentially limiting factor, particularly in the cases of Afghanistan and Georgia, was that web-based research was limited to resources translated into or published in English. Another limiting factor was that the COVID-19 pandemic precluded scheduling face-to-face interviews with representatives from the agencies in charge of civil registration as planned. Thus, all interviews were conducted virtually.

Pathways to legal identity

Civil registers are pivotal functions of public administration and governance: they support the delivery of essential public sector services through validating and verifying identities and recording the biographic information on which legal identity is based. The information held in civil registration records is also important for establishing family relations, civil status (single, married, or divorced), living status (alive or deceased), and citizenship. The public sector depends on the vital and demographic statistics that civil registers provide to develop policies and programs that can benefit the entire population or targeted segments of it. These data are also essential for creating and maintaining trustworthy voter rolls.

For the civil registration system to fulfill its role as a central public administration service, the offices where registration is done need to be easily accessible, well equipped, and staffed by qualified officials. Each office also needs to have the capacity to record all vital events in its jurisdiction: this is not the case in many developing countries, perhaps particularly in countries that are emerging from conflict. Also, to encourage universal registration, citizens and residents need to perceive the service as trusted and trustworthy and relevant to their lives.

The registration of vital events is closely linked to civil identification and issuance of national identification credentials (usually cards of some sort). This makes civil registration an integral part of a country's identity management system. Identity management refers to the "rules and procedures that are defined between an individual and organizations regarding the entitlement, use and protection of personal information in order to authenticate individual identities and provide authorization and privileges within or across systems and enterprise boundaries."⁷

Overcoming obstacles and setting agendas for change

The four countries included in this study have singular experiences in restructuring their legal, regulatory, and institutional frameworks toward more inclusiveness after conflicts or adverse governance situations. Coming to terms with past conflicts, human rights abuses, and exclusionary practices has involved, among other things, building bridges to create trust in the

7 Harbitz, M. and Kentala, K. 2015. Dictionary for Civil Registration and Identification 2015, p. 45. Washington, D.C.: Inter-American Development Bank. publications.iadb.org/publications/english/document/Dictionary-for-Civil-Registration-and-Identification.pdf

governance structures and among former adversaries. One factor that all four countries saw as a key pillar of improved governance was the reform of their identity management systems.

Each of these four countries has acknowledged the need to deal with past conflict issues in its identity management system, amended its civil registration practices and procedures, and sought to incorporate the means for everyone to be able to register a vital event and access an identity credential. One approach has been to amend the requirements for the kinds of documents that need to be presented to verify identity to register a vital event. Another has been to make information about registration processes and procedures available in all major languages.

However, according to the Fragile States Index⁸ for 2020, all four countries continue to face governance challenges; Georgia, Rwanda, and South Africa are not considered to be sustainably stable democracies, whereas the indicators for Afghanistan put the country in the “alert” category.⁹ Although all of these countries face challenges ahead with respect to governance in general and their identity management systems, this report will look at some of the progress made.

Laying the foundations of legal identity for all: Four approaches

While all four countries analyzed here have experienced past or current conflicts, their historical, political, social, and economic situations are unique. The following overview by country describes each country's approach to civil registration and identity management by reviewing these factors:

- ▮ Its constitution;
- ▮ Its legal approach;
- ▮ Key features of its legal system; and
- ▮ The institutional arrangements in place to further the efficiency and quality of its registration processes and procedures.

First, the paper describes how the countries establish citizenship, since citizenship status is often generated from civil registration data and typically also affects identity registration. Second, it explores how they address the registration of unregistered, undocumented, internally displaced, and refugee populations — which can be particularly challenging in post-conflict settings — as a measure of how inclusive the civil registration and identification systems are.

8 The Fragile States Index is based on a conflict assessment framework that measures vulnerability in pre-conflict, active conflict, and post-conflict situations. The methodology uses both qualitative and quantitative indicators, relies on public source data, and produces quantifiable results.
fragilestatesindex.org/indicators

9 Messner de Latour, J.J. et al. 2020. Fragile States Index Annual Report 2020. The Fund for Peace.
fragilestatesindex.org/2020/05/08/fragile-states-index-2020-annual-report. Georgia, Rwanda, and South Africa were all considered to be at “elevated warning” or “high warning” levels just below the “alert” category (see 4–7). Interestingly, South Africa was identified as one of the countries where stability has worsened most in the last decade, while Georgia was identified as one of the countries where stability has improved most in that period (see 11).

Afghanistan



Background and context

Afghanistan is a landlocked country situated at the crossroads of trade, conflict, and conquests in Asia over the centuries. More recent conflicts starting in the 1970s continue to influence Afghanistan's ability to govern itself. Of the four countries included in this study, Afghanistan is the most fragile, due to past and ongoing conflicts; for decades, it was a buffer state in global and regional politics. State and institution building are a challenge for a tribal and hierarchical society in a geographically complicated area with no common national language or formal institutional structures.

Table 1. Afghanistan at a glance.

Estimated population	38 million ¹⁰
Population growth rate	2.3% ¹¹
Internally displaced population	2.5 million ¹²
Per capita GDP	US\$507 ¹³
Poverty index	55.9% ¹⁴
Ranking in the 2019 Human Development Index	170 out of 189 ¹⁵
Number of recognized ethnic groups	14 ¹⁶
Official languages	Pashto and Dari; ¹⁷ in some areas, most people speak Uzbeki, Turkmani, Pachaie, Nuristani, Baluchi, or Pamiri

Table 2. Historical overview.

1919	Afghanistan becomes an independent nation.
1933–1973	40-year rule of the last king, Mohammed Zahir Shah (a period of relative political stability). The country gradually strengthens ties with the Soviet Union. The Communist Party and various Islamic movements increase their influence during the 1970s.
1973	The monarchy is abolished following a military coup, which establishes a dictatorship with strong State involvement in the economy.
1978	The <i>Saur</i> (April) Revolution of 1978 brings a change in government marked by rivalry between the two military officers who took over leadership. Both push for radical socialist change, including land redistribution and the promotion of women in government. Traditional Islamic groups oppose these moves, leading to the rise of the <i>mujahideen</i> guerrilla movement.
1979	Relations with the United States sour after the U.S. Ambassador to Afghanistan is kidnapped and murdered in Kabul. The U.S. cuts off assistance to Afghanistan and begins supporting the <i>mujahideen</i> . In December 1979, the Soviet Union sends troops into Afghanistan to quell the <i>mujahideen</i> and their U.S. backers. Widespread opposition to the new leader installed by the Soviets produces violent public demonstrations: millions of people flee Afghanistan, particularly into Pakistan and Iran, while the <i>mujahideen</i> gains control of some rural areas.

10 World Bank. n.d. Population total – Afghanistan.
data.worldbank.org/indicator/SP.POP.TOTL?locations=AF

11 Ibid.

12 UNHCR. n.d. Global Focus. UNHCR Operations Worldwide: Afghanistan.
reporting.unhcr.org/afghanistan

13 World Bank. 2019. GDP per Capita (Current USD).
data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=AF

14 United Nations Development Programme. 2019. 2019 Human Development Report, p. 320, Table 6.
hdr.undp.org/en/content/2019-human-development-index-ranking

15 Ibid., pp. 300–303, Table 1.

16 Afghanistan's Constitution of 2004. Art. 2.
constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

17 Ibid., Art. 16.

1989	The Soviet withdrawal is completed.
1992	The <i>mujahideen</i> takes control of the central government.
1993–1994	Rise of the Taliban movement, led by clerics and students mainly of rural, Pashtun origin.
1996	The Taliban take control of Kabul; they reintroduce traditional Islamic values and outlaw the opium trade, impose harsh measures to combat crime, and severely curtail women's education and employment.
2001	The Taliban is estimated to be in control of at least 75% of the country by the time of the September 11 attacks on the U.S. by Al Qaeda, ¹⁸ a terrorist organization that had been allowed to have training camps in Afghanistan. ¹⁹ The Taliban's refusal to extradite Al Qaeda leader Osama bin Laden in the wake of the 9/11 attacks precipitates war between Afghanistan and the U.S. and NATO. The Taliban government is overthrown in 2001; an interim government led by Hamid Karzai is installed in terms of the Bonn Agreement between key political leaders, with the support of the United Nations. ²⁰
2004	A new constitution is adopted; Karzai is elected president. The national government controls only about 30% of the country, with the rest under the control of regional warlords and remnants of the Taliban. Efforts to rebuild institutions, in spite of financing from the international community, are not successful, partly because the new government is weak and partly because of the partitioning of aid without an overall coordination structure.
2009	Karzai is re-elected president.
2014	The election results in a disputed runoff between Dr. Abdullah Abdullah and Ashraf Ghani. It is resolved by a power-sharing agreement, where Ghani becomes president and Abdullah becomes chief executive officer. Afghanistan, the U.S., and NATO sign agreements to end combat missions. This opens the door to renewed efforts by some members of the international community to rebuild government institutions, support good governance, and provide socioeconomic aid to Afghanistan. ²¹

18 Congressional Research Service. 2017. Afghanistan: Post-Taliban Governance, Security, and U.S. Policy: November 15, 2001–December 13, 2017. everycrsreport.com/reports/RL30588.html

19 BBC. 2012. The History of the Afghanistan War. 7 March. bbc.co.uk/newsround/15214375

20 UN Security Council Resolution 1386, S/RES/1386 (2001). 20 December 2001.

21 See Congressional Research Service, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy; and Freedom House. 2019. Freedom in the World 2019: Afghanistan. freedomhouse.org/country/afghanistan/freedom-world/2019

Registration of vital events in the past

The registration of vital events in Afghanistan dates back to the start of the Second Anglo-Afghan War in 1878, but was inconsistent and not continuous.²² Initially, registration was done for conscription and taxation.²³ Several efforts to create a civil register have been made since then: the two most important ones took place in 1923 and 1955.

Afghanistan's 1923 Constitution defined all residents as citizens.²⁴ The first law on citizenship also dates to 1923. It conferred citizenship on all residents without religious discrimination and was based on *jus sanguinis* (acquisition by descent) thereafter. Recognition of citizenship centred on acquisition of the *tazkera* (national identity card) for men: the history of citizenship law in Afghanistan is thus intertwined with identification documentation. This law made *tazkera* compulsory for obtaining a passport, enrolling children in school, paying taxes, filing court cases, registering marriages, and engaging in business. The *tazkera* was also used to implement compulsory military service. The requirement of the *tazkera* for so many purposes was widely viewed as unwarranted state inference in private life.²⁵

A new citizenship law enacted in 1936 supplemented the *jus sanguinis* principle with *jus soli* (citizenship determined by place of birth) as the basis for citizenship for the first time (without mentioning *tazkera*).²⁶

In 1955, the Law on Registration of Population Records mandated that all "male subjects of the Government of Afghanistan, whether resident in Afghanistan or abroad," must be registered and obtain a *tazkera*. Failure to comply was punishable by "a term of imprisonment with hard labor for one month."²⁷

The civil register was one of the institutions that fell into disarray during the protracted wars of the 1980s and 1990s; with no systematic birth registration, many people failed to record precise birth dates. The arrival of the United States and NATO allies in 2001 brought job opportunities that required positive identification, leading to an uptick in registrations. Since many did not know their date of birth, January 1 became a popular choice of birthday.²⁸

22 UNICEF. 2019. Status of Civil Registration and Vital Statistics in South Asia Countries, 2018, p. 29. unicef.org/rosa/sites/unicef.org/rosa/files/2019-05/UNICEF%20ROSA%20Status%20of%20Civil%20Registration%20and%20Vital%20Statistics%20in%20South%20Asia%20Countries%202019.pdf

23 Barfield, T. 2012. Anglo-Afghan wars and state building in Afghanistan. *Afghanistan: A Cultural and Political History*. Princeton University Press.

24 Constitution of Afghanistan. 1923. Art. 8: "All persons residing in the kingdom of Afghanistan, without respect to religious or sectarian differences, are considered to be subjects of Afghanistan. Afghan citizenship may be obtained or lost in accordance with the provisions of the appropriate law." afghan-web.com/history/afghanistan-constitution-of-1923

25 Athayi, A. 2017. Report on Citizenship Law: Afghanistan, p. 3. Global Citizenship Observatory. cadmus.eui.eu/bitstream/handle/1814/45933/GLOBALCIT_CR_2017_09.pdf; Barfield, *Afghanistan: A Cultural and Political History*, pp. 184–185.

26 Athayi, A. 2017. Report on Citizenship Law: Afghanistan, pp. 4–6.

27 *Law on Registration of Population Records – 1955*, Arts 1 and 24. asianlii.org/af/legis/laws/loropr1955426

28 Stieff, K. 2013. "In Afghanistan, Jan. 1 is Everyone's Birthday." *Washington Post*, 31 December. [washingtonpost.com/world/in-afghanistan-its-everyones-birthday/2013/12/31/81c18700-7224-11e3-bc6b-712d770c3715_story.html](https://www.washingtonpost.com/world/in-afghanistan-its-everyones-birthday/2013/12/31/81c18700-7224-11e3-bc6b-712d770c3715_story.html)

The government now faces the challenge of strengthening civil registration and identity processes as it attempts to transition to a digital system.

Legal framework for establishing legal identity

Afghanistan is a civil law jurisdiction.²⁹ The current laws relevant to the registration of vital events and issuance of identity documents are listed in Table 3.

Table 3. Afghanistan's legal framework for establishing legal identity.

Law	Date of approval or most recent amendment	Comments
<i>Constitution of Afghanistan</i>	2004	
<i>Afghan Civil Code</i>	1997	
<i>Shiite Personal Status Law</i>	2009	
<i>Law of 2014 on Registration of Population Records</i>	2017	
<i>Election Law (2016)</i>	2019	
<i>Passport Law (2000)</i>	2015	No English translation could be located
<i>Citizenship Law</i>	2000	

Constitution

Afghanistan's Constitution³⁰ establishes the country as an Islamic State with Islam as the official religion, while guaranteeing that followers of other faiths "shall be free within the bounds of law in the exercise and performance of their religious rituals" (Arts 1–2). All laws must be consistent with the Constitution (Arts 121, 162), and no law is allowed to "contravene the tenets and provisions of the holy religion of Islam in Afghanistan" (Art. 3).³¹

The Constitution requires the State to "create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realization of democracy, attainment of national unity as well as equality between all peoples and tribes and balance development of all areas of the country" (Art. 6).³² It forbids any kind of discrimination and distinction between citizens and provides that all citizens, man and woman, have equal rights and duties before the law (Art. 22).³³

29 Afghanistan Legal Education Project. 2015. *An Introduction to the Law of Afghanistan*, 3rd ed. www-cdn.law.stanford.edu/wp-content/uploads/2015/12/Intro-to-Law-of-Afg-3d-Ed.pdf

30 *Constitution of Afghanistan*. 2004. constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

31 Article 35 prohibits the formation of any political party on the basis of religious sectarianism (as well as tribalism, parochialism, or language). Article 80 prohibits ministers from using their positions for "linguistic, sectarian, tribal, religious or partisan purposes." Article 149 prohibits amendment of the Constitution in any way that would alter the principle of "adherence to the tenets of the Holy religion of Islam."

32 Freedom House. Freedom in the World 2019: Afghanistan.

33 Ibid.

Basis of citizenship in Afghanistan

The *Law on Citizenship of the Islamic Emirate of Afghanistan, 2000*, incorporates a blend of *jus sanguinis* and *jus soli*.³⁴ There are five routes to Afghan citizenship: descent, birth, marriage, naturalization, and citizenship based on international treaties. The law states that citizenship "is equal and similar" for all citizens (Art. 2(1)). However, the law makes clear that its rules on citizenship are subordinate to "the tenets and principles of Islam" (Art. 9(1)).

Although this law appears to be gender neutral, it is not. It must be read together with the Afghan Civil Code, which makes distinctions on citizenship based on the sex of the citizen—parent and on whether a child is born inside or outside of marriage — with "marriage" meaning that the parents have been married according to Sharia law. A child born inside a valid marriage (one recognized under Sharia law) can acquire Afghan citizenship from a citizen father, but birth to a citizen mother does not per se confer citizenship.³⁵

Citizenship by descent: The primary basis for Afghan citizenship is *jus sanguinis*:

- (1) A child is an Afghan citizen no matter where they are born if both parents are Afghan citizens (Art. 9(2)).
- (2) If only one parent is an Afghan citizen, the child is Afghan under these conditions:
 - ▶ The child is born in Afghanistan;
 - ▶ The child is born outside Afghanistan but the non-citizen parent is a permanent resident of Afghanistan;
 - ▶ The child is born outside Afghanistan and both parents live outside Afghanistan, but the parents select Afghan citizenship for the child by mutual consent (Art. 10(1)). Dual citizenship is not permitted (Art. 7), but the child can change the parents' choice by acting within six months of reaching age 18 (Art. 10(2)).³⁶
- (3) The law states that a child will be considered an Afghan citizen whether the child was born inside or outside Afghanistan if one of the parents is an Afghan citizen and the other "is not or his/her citizenship is not established" (Art. 11).

Citizenship by birth in Afghanistan: If a child is born in Afghanistan to foreign parents (other than diplomats or members of international organizations), *jus soli* applies. The child will be considered an Afghan citizen if he or she, upon reaching age 18, intends to live permanently in Afghanistan and has not applied for the citizenship of a foreign country within six months of reaching age 18 (Art. 13). A child who is "found" in Afghanistan with no documentation proving the

34 *Law on Citizenship of the Islamic Emirate of Afghanistan*. n.d. The Articles cited in the text of this section on citizenship refer to the provisions of this law. refworld.org/pdfid/404c988d4.pdf

35 U.S. Department of State, Bureau of Democracy, Human Rights and Labor. 2019. Afghanistan: Country Reports on Human Rights Practices for 2019, s. 6: Birth Registration: A citizen father transmits citizenship to his child. Birth in the country or to a citizen mother alone does not transfer citizenship. state.gov/reports/2019-country-reports-on-human-rights-practices/afghanistan

36 It has been suggested that Article 11 seems to have been adopted to prevent statelessness in the children of Afghan women who marry a foreign citizen, because according to Article 28 of the law on citizenship, Afghan women maintain their Afghan citizenship on marriage to a foreigner. Athayi, A. 2017. Report on Citizenship Law: Afghanistan, p. 8.

parents' citizenship is considered to be Afghan (Art. 12) to prevent statelessness. This includes the children of unknown parents.³⁷

Citizenship by naturalization: This may be granted upon application to persons who have reached age 18, have lived in Afghanistan for 5 years, and have not committed any crimes while in Afghanistan (Art. 15). The applicant must complete a comprehensive citizenship form (*engate*) and provide testimonials to his or her identity (Art. 37). A preliminary decision is to be made by a commission composed of members of the Supreme Court, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Interior Affairs, and the Directorate General of Intelligence (Art. 39).³⁸

Citizenship by marriage: If a foreigner marries an Afghan citizen in accordance with Sharia law, that spouse can also apply for Afghan citizenship — keeping in mind the prohibition on dual citizenship — without having to be a resident of Afghanistan for the five-year period that normally applies to naturalization (Art. 18). A spouse of an Afghan citizen who holds no other citizenship will be considered an Afghan citizen (Art. 19). A foreign citizen who has acquired Afghan citizenship by marriage can retain that citizenship after the death of the Afghan spouse or after a divorce, but also has the alternative option of requesting that his or her previous citizenship be restored.³⁹ (In the converse situation, the law provides that an Afghan citizen who marries a foreigner “maintains his or her Afghan citizenship” (Art. 28).⁴⁰

Citizenship by international norms: Afghan citizenship can also be obtained according to the norms set out in international treaties, “unless they contradict the tenets of Islam” (Art. 22).⁴¹

Refugees in Afghanistan: There is no special route to citizenship for refugees in Afghanistan and no specific law on this issue.⁴² However, there is a Ministry of Refugees and Returnees.

The Norwegian Refugee Council reported in 2019 that Pakistani refugees in Afghanistan — who are concentrated in the Khost and Paktika provinces — were unable to formally enrol in Afghan schools because they lacked proof of Afghan citizenship.⁴³

37 Ibid., p. 9.

38 The *Law of 2014 on Registration of Population Records* gives the Office of Registration of Population Records and Evaluation of Foreigner Identity Affairs the duty to evaluate documents on acquiring or withdrawing citizenship and to present them to the Commission (Art. 7(1), point 8).

39 There are also rules on what happens to children born of the marriage in these situations. Children under age 18 can maintain their Afghan nationality after the death of one parent. In the case of divorce, if the parent who was originally Afghan does not agree with the children retaining Afghan citizenship, they will nevertheless be considered Afghan nationals until they reach age 18 (Art. 21(2)–(3)).

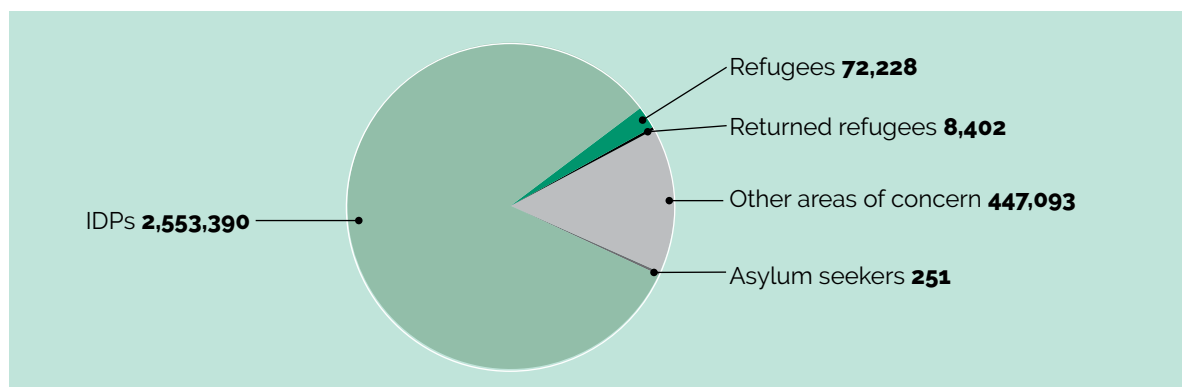
40 “Afghanistan is party to the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the citizenship law therefore follows the ‘Independent Citizenship Principle.’ Whether an Afghan man marries a foreign woman or a foreign man weds an Afghan woman, the marriage does not affect his or her citizenship.” Athayi, A. 2017. Report on Citizenship Law: Afghanistan, p. 11.

41 No examples of the application of this route to citizenship were located.

42 Afghanistan has yet to adopt a national refugee law or asylum framework. U.S. Department of State, Bureau of Democracy, Human Rights and Labor. Afghanistan: Country Reports on Human Rights Practices for 2019, s. 2-f; Azad, E. 2019. No Place to Call Home for Pakistani Refugees. nrc.no/news/2019/october/no-place-to-call-home-for-pakistani-refugees

43 Azad, E. 2019. No Place to Call Home for Pakistani Refugees.

Figure 1. Refugees and displaced Afghan citizens by category, 2019.



Source: UNHCR Global Focus: Afghanistan, 2019 Year End Report. reporting.unhcr.org/node/4505

Displaced Afghan citizens: Of greater magnitude is the situation of Afghan refugees in other countries. The United Nations High Commissioner for Refugees (UNHCR) reported that there were almost 2.5 million registered refugees from Afghanistan in other countries in 2019: they comprised “the largest protracted refugee population in Asia, and the second largest refugee population in the world” (after Syria).⁴⁴ No information on the registration of internally displaced persons and returnees as citizens could be located.

Procedure for citizenship applications: The law states that applications for Afghan nationality are ultimately forwarded by the Ministry of Foreign Affairs to the *Amirul mo'minin* (the supreme religious leader, or caliph ⁴⁵) (Art. 44) and that only the *Amirul mo'minin* can grant someone Afghan nationality, by decree (Arts 23, 40(1)). This law was enacted under Taliban rule, so it appears that final decision-making power now rests with the president (Art. 15).⁴⁶ There appears to be no distinction between the treatment of male and female applicants;⁴⁷ the law states that foreigners may be accepted as Afghan citizens “regardless of their ethnicity, linguistic relations, or sex and education.”⁴⁸

Civil registration in Afghanistan today and efforts to improve its efficiency

The *Law on Registration of Population Records* was enacted in 2014. It was amended in 2017 to make the Afghanistan Central Civil Registration Authority (ACCRA) the authority for the registration of vital events. ACCRA is responsible for both civil registration and civil identification; it reports directly to the president. In 2017, ACCRA was subsumed under the National Statistics and Information Authority (NSIA). Before that, the Ministry of Interior Affairs was the responsible entity (Figure 2).

44 UNHCR. 2018. Afghanistan. unhcr.org/en-us/afghanistan.htm

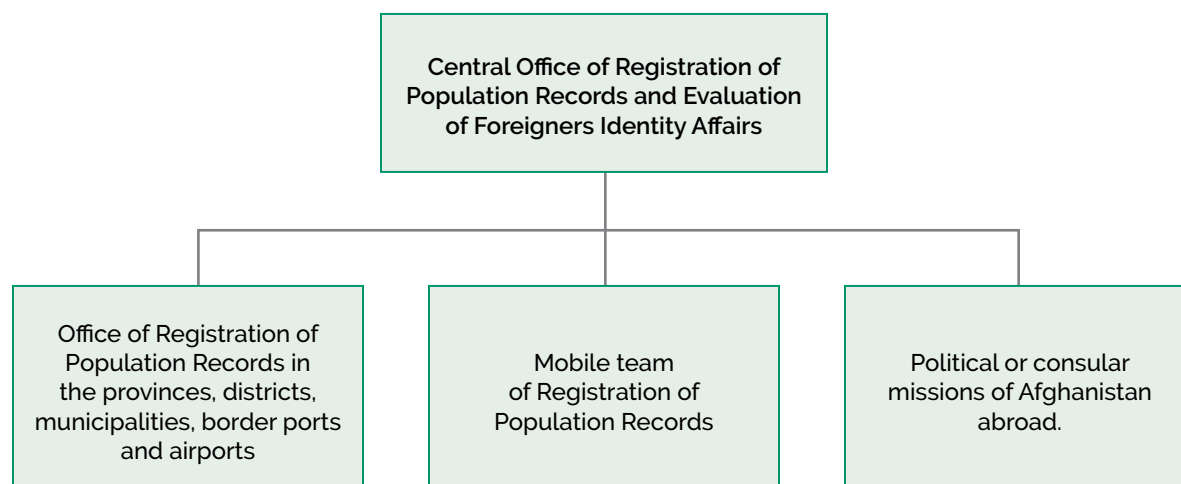
45 *Amirul mo'minin* is described as “the supreme religious & political leader, or caliph” in Special Immigration Appeals Commission (UK), Appeal No: SC/112/2011, 18 May 2012, para 10. siac.decisions.tribunals.gov.uk/Documents/Y1_preliminary_issue_18052012.pdf

46 Athayi, A. Report on Citizenship Law: Afghanistan, p. 15.

47 Ibid., p. 9.

48 Obtaining Afghan citizenship by naturalization does not affect the citizenship of a spouse or children over age 18. Children under age 18 who live with the naturalized parent are also considered Afghan citizens, but can decline this status if they wish within six months after coming of age (Arts 16–17).

Figure 2. Administrative structure for civil registration in Afghanistan.



The 2014 *Law on Registration of Population Records* (as amended in 2017) requires births to be registered within three months.⁴⁹ Marriages must be registered immediately. Deaths must be registered within 30 days. Registration is free of charge for all these civil events.

In an important new development, the law requires the Ministry of Public Health to implement measures for all births in government or private health facilities to be reported to the relevant offices of Registration of Population Records. In practice, this has reportedly had the advantage of providing confirmation of the date and place of birth as well as making birth registration more accessible; it has also coupled the birth registration process with information on fundamental infant healthcare issues, such as vaccination and the importance of breastfeeding.⁵⁰ However, the efficacy of this development is undermined by the fact that almost half of all births take place at home, particularly in rural areas.⁵¹

It is the family's responsibility to approach the local population records office to ensure that vital events such as births and deaths are recorded.⁵² The person who requests the registration must have an identity card (*tazkera*). Currently, the registration of vital events is paper based: biographic information is recorded in a three-book system. One book remains at the district level, one book is sent to the provincial level, and the third book is sent to the central office in

49 UNICEF. 2010. Status of Civil Registration and Vital Statistics in South Asia Countries, p. 19.

[unicef.org/rosa/reports/status-civil-registration-and-vital-statistics-south-asia-countries](https://www.unicef.org/rosa/reports/status-civil-registration-and-vital-statistics-south-asia-countries)

50 See Khaliqyar, S. 2017. Birth Registration: A Passport to the Future. UNICEF Afghanistan, 25 May.

[unicef.org/afghanistan/stories/birth-registration-passport-future](https://www.unicef.org/afghanistan/stories/birth-registration-passport-future)

51 Central Statistics Organization. 2018. Afghanistan Living Conditions Survey 2016–17, p. 207.

reliefweb.int/report/afghanistan/afghanistan-living-conditions-survey-2016-17. This survey found that 17 percent of all births in urban areas take place at home, compared to 56.3 percent in rural areas and 82.9 percent in the Kuchi community.

52 For example, the duty to report the birth of a child falls on the child's parents or lawful relative (Law of 2014, Art. 17). The term "parent" is not defined to exclude women, but this requirement must be read in conjunction with customary and Sharia laws.

Kabul. This process is not automatic, nor is it done systematically, so the information at both the provincial level and in the Kabul office is incomplete. The recording of vital events is planned to transition to an electronic recording system, but at the time of writing, the target date to complete the process is not known.

Both the *Afghan Civil Code 1977* and the *Shiite Personal Status Law 2009* contain detailed rules about establishing parentage; the primary emphasis is on rules about paternity. In 2011, in response to Afghanistan's most recent report under the Convention on the Rights of the Child, the Committee on the Rights of the Child expressed particular concern about failure to register the births of children born outside marriage.⁵³ If there is no documentation of a date of birth, this information can be based on statements by the child's parents' lawful relatives for a child under age 7, or otherwise determined by registration officials.⁵⁴ There is also a specific procedure for dealing with children where the identity of the parents cannot be confirmed.⁵⁵

A birth certificate is issued at the time of registration. Recently, after an intense public campaign, the mother's name was added to the birth certificate.⁵⁶ The mother's name is not on the *tazkera*, but as discussed below, this is set to change.

Marriage and death registration are both reported to be low. In response to Afghanistan's most recent report (in 2013), the CEDAW Committee expressed its concern about the "low registration of marriages and divorces, which prevents women from claiming their legal rights"; the committee recommended that the government implement measures "to facilitate the procedure to register marriages and divorces."⁵⁷ The lack of birth certificates hampers enforcement of the minimum age for marriage,⁵⁸ and since registration of marriages is voluntary, child marriages and forced marriages are likely to remain unregistered and undetected.⁵⁹ The registration of divorces is complicated by the fact that divorces can be enacted without the involvement of a court. Also, divorces are reversible except in certain circumstances — even when granted by a court.⁶⁰

53 Committee on the Rights of the Child. 2011. Concluding Observations: Afghanistan. CRC/C/AFG/CO/1, para. 34. tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AFG/CO/1&Lang=En

54 Law of 2014, Art. 26.

55 Ibid., Art. 18.

56 Nowrouzi, M. 2020. Where's My Name: Afghan Women Campaign for the Right to Reveal Their Names. BBC Afghan Service. [bbc.com/news/world-asia-53436335](https://www.bbc.com/news/world-asia-53436335)

57 Committee on the Elimination of Discrimination against Women. 2013. Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan. CEDAW/C/AFG/CO/1-2, para. 42. 23 July. refworld.org/publisher,CEDAW,,AFG,51ff5ac94,0.html

58 U.S. Department of State, Bureau of Democracy, Human Rights and Labor. Afghanistan: Country Reports on Human Rights Practices for 2019, s. 6.

59 Musawah for Equality in the Family. 2020. Thematic Report on Article 16, Muslim Family Law and Muslim Women's Rights in Afghanistan (report to the CEDAW Committee), p. 4. tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AFG/INT_CEDAW_CSS_AFG_41112_E.docx

60 See *Afghan Civil Code 1977*, Arts 135–ff, and *Shiite Personal Status Law 2009*, Arts 140–ff.

Timely registration of deaths is not common,⁶¹ and the law does not require a death certificate as a prerequisite for burial or cremation.⁶² Death certificates are not always necessary for inheritance purposes, as other forms of verification can suffice.⁶³

The 2015 Demographic Health Survey in Afghanistan estimated that 42.3 percent of children under the age of 5 have had their births registered.⁶⁴ The Afghanistan Living Conditions Survey 2016–2017 found that the births of fewer than 30 percent of all children under age 5 were registered: 60.9 percent of children under 5 years in urban areas were registered, compared to 22.4 percent in rural areas and 10.4 percent of Kuchi (nomad) children.⁶⁵ According to the national civil registration and vital statistics (CRVS) strategy, the target is to register 80 percent of all births in a timely manner by 2024.⁶⁶

One factor that complicates efforts to accurately measure the coverage of vital statistics is the lack of decades of census data. In 1979, Afghanistan attempted a national census with the assistance of the UNFPA. However, due to the increasingly volatile security situation, it has yet to be fully completed. Rebel groups killed some census takers. Completed questionnaires were reportedly destroyed before reaching Kabul, and coverage in the central and eastern areas of the country was much lower than in the northern and some southern provinces, where those more loyal to the regime in power were located.⁶⁷

Identity cards

Civil registration and identification are located in the same institution, ACCRA, which provides potential for an integrated identity management system in the future. The inclusion of the statistical agency under the same umbrella should further strengthen the potential of the identity management system as a tool to improve governance in Afghanistan.

The Afghan government's investment in upgrading the national identity card has been challenging.⁶⁸ In the 2014 *Law on Registration of Population Records*, the *tazkera* is described as “an official document that is printed on [polycarbonate] cards and distributed as a proof of

61 Travel.state.gov. n.d. Birth, Death, Burial Certificates. travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Afghanistan.html

62 Afghanistan Civil Registration and Vital Statistics Country Strategic Plan 2016 to 2020. 2015, p. 20. getinthepicture.org/resource/afghanistan-civil-registration-and-vital-statistics-country-strategic-plan-2016-2020

63 Norwegian Refugee Council. 2012. Access to Tazkera and Other Civil Documentation in Afghanistan, p. 21. nrc.no/globalassets/pdf/reports/af_civil-documentation-study_081116.pdf

64 Central Statistics Organization, Ministry of Public Health, and ICF. 2017. Afghanistan Demographic and Health Survey 2015, p. 11. dhsprogram.com/publications/publication-fr323-dhs-final-reports.cfm

65 Central Statistics Organization. Afghanistan Living Conditions Survey 2016–17, p. 207.

66 UNICEF. 2019. Status of Civil Registration and Vital Statistics in South Asia Countries, p. 28. unicef.org/rosa/reports/status-civil-registration-and-vital-statistics-south-asia-countries

67 Encyclopedia Iranica. n.d. CENSUS ii. In Afghanistan. iranicaonline.org/articles/census-ii#prettyPhoto

68 Sayed Salahuddin, S. and Constable, P. 2018. New Afghan ID Cards, Aimed at Unifying the Country, Are Doing the Opposite. *Washington Post*, 10 March. [washingtonpost.com/world/asia_pacific/new-afghan-id-cards-aimed-at-unifying-the-country-are-doing-the-opposite/2018/03/10/cab05128-1c9b-11e8-98f5-ceecfa8741b6_story.html](https://www.washingtonpost.com/world/asia_pacific/new-afghan-id-cards-aimed-at-unifying-the-country-are-doing-the-opposite/2018/03/10/cab05128-1c9b-11e8-98f5-ceecfa8741b6_story.html)

national identity to citizens of the country pursuant to provisions of this law" (Art. 3(3)). It is the primary identification document for Afghans to prove identity, residency, and citizenship. The key information is printed in Pashto, Dari, and English.

Unusually, compared to most countries that require citizens to hold a national identity card, the *tazkera* is issued immediately after birth registration rather than at the more typical age of 16 or 18. The guardian or lawful relative of a child has a duty to obtain a national identity card for the child before the child reaches the age of 3 months, with identity based on the child's birth certificate.⁶⁹ A child's identity card must be renewed when the child reaches age 7 and again at age 18. Beyond that, the law requires the card to be replaced only if a person's facial features change to the point that the photograph in the database and on the card no longer matches the person's appearance.⁷⁰

A *tazkera* is issued once the birth registration process has been completed. The family must return to pick up the credential, and not every family does so. Children must have the credential to be enrolled in school: anecdotal evidence points to underregistration for girls and hence lower enrolment rates for girls in the education system. According to a Norwegian Refugee Council report, "around two-thirds of Afghan girls do not attend school because of discriminatory attitudes that do not value their education."⁷¹

The *tazkera* is undergoing a transition from being paper based to electronic.⁷² The *e-tazkera*, which contains biometric information about the holder, was officially launched in 2018.

Recently, there has been a great deal of political debate on whether the *tazkera* should indicate ethnicity. The controversy stems from differing attitudes about the import of the word "Afghan," which was historically used interchangeably with "Pashtun," the largest ethnic group in Afghanistan. The 2004 Constitution explicitly states that "the word Afghan shall apply to every citizen of Afghanistan." Some feared that this label on the ID card suggests that the holder must be Pashtun to be a citizen of Afghanistan, whereas others understood it to be an ethnically neutral statement of citizenship.⁷³ In 2017, the Law of 2014 was amended so that the *tazkera* now indicates both nationality and ethnicity along with religion on the face of the card.

69 The guardian of a child is defined as the father, grandfather, or other ascendant of a child. A lawful relative is a person who is related by blood or marriage to the person in question and who holds a national identity card. Law of 2014, Art. 3.

70 Ibid., Arts 9(4), p. 10.

71 Norwegian Refugee Council. 2018. Education in Emergencies: Children in Distress, p. 15. nrc.no/globalassets/pdf/reports/education-in-emergencies-children-in-distress/nrc-education_in_emergencies-report-full-screen.pdf

72 Interview with Mr. Bahadur Hellali, 24 August 2020.

73 Yawar Adili, A. and Bjelica, J. 2018. The E-Tazkera Rift: Yet Another Political Crisis Looming? Afghanistan Analysts Network, 22 February. afghanistan-analysts.org/en/reports/political-landscape/the-e-tazkera-rift-yet-another-political-crisis-looming

It was estimated in 2018 that 11.98 million people in Afghanistan were without identity credentials.⁷⁴ A 2019 report stated that the legal duty to obtain an ID is not being enforced in practice, even though the inability to produce the *tazkera* can lead to practical disadvantages.⁷⁵

The current election law mandates the use of either the *tazkera* or some other document specified by the Independent Election Commission to verify one's identity to register to vote.⁷⁶ One rationale for the rollout of the *e-tazkera* was to combat electoral fraud.⁷⁷

One implementation challenge is that Afghan naming conventions are flexible, with many people using a *takhalus*, which is not a surname but more of a discretionary identifier (such as a reference to a tribe, a male ancestor, a geographic location, or a title reflecting the person's occupation or interests).⁷⁸ The result is that many citizens have multiple documents with different names and birth dates.

As of 2017, Afghanistan had the largest gender gap of any country with respect to identity card possession: 94 percent of men had an identity card, compared to 48 percent of women.⁷⁹ According to the World Bank's Women, Business and the Law report, a married woman in Afghanistan cannot apply for a national ID card in the same way as a married man can.⁸⁰ More than difficulty of access is at stake; the same survey found that 70 percent of people without an ID (the majority of whom were women) reported that they do not have ID because they have no need for it.⁸¹ This appears to be a manifestation of the constrained role of women in Afghan society. A recent election study reported that women were less likely than men to have a *tazkera*

74 World Bank. 2018. Global ID4D Database. Unregistered Population Data.

datacatalog.worldbank.org/dataset/identification-development-global-dataset

75 LANDINFO Country of Origin Information Centre. 2019. Afghanistan: Tazkera, Passports and Other ID Documents, p. 5. landinfo.no/wp-content/uploads/2019/08/Afghanistan-Tazkera-passports-and-other-ID-documents-22052019-final.pdf

76 Election Law 2016 (as amended in 2019), Art. 6. See, for example, Asia-Pacific International Foundation for Electoral Systems. 2019. Elections in Afghanistan 2019 Presidential Election: Frequently Asked Questions. ifes.org/sites/default/files/ifes_faqs_elections_in_afghanistan_2019_presidential_election_september_2019.pdf; Yawar Adili, A. 2017. Afghanistan's Incomplete New Electoral Law: Changes and Controversies," p. 3. 22 January. reliefweb.int/sites/reliefweb.int/files/resources/afghanistans-incomplete-new-electoral-law-changes-and-controversies.pdf

77 Bjelica, J. and van Bijlert, M. 2016. The Troubled History of the E-tazkera (Part 1): Political Upheaval. Afghan Analysts Network, 25 January. afghanistan-analysts.org/en/reports/rights-freedom/the-troubled-history-of-the-e-tazkera-part-1-political-upheaval

78 Ibid., note 5, citing Dupree, L. 1980. Afghanistan, 2nd ed., Princeton University Press. afghanistan-analysts.org/en/reports/rights-freedom/the-troubled-history-of-the-e-tazkera-part-2-technical-stumbling-blocks

79 Global Findex Database. 2017. id4d.worldbank.org/global-dataset. The CEDAW Committee, in response to Afghanistan's most recent report, stated that it was "concerned about the high number of women who lack personal identity documentation in the State party, which increases the risks of statelessness and restricts women's enjoyment of their rights such as to secure land and property and to access education, health care and employment opportunities." Committee on the Elimination of Discrimination against Women. 2013. Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan, paras 30–31. CEDAW/C/AFG/CO/1-2, 23 July. refworld.org/publisher,CEDAW,,AFG,51ff5ac94,0.html

80 World Bank. n.d. Global ID Coverage, Barriers, and Use by the Numbers: Insights from the ID4D-Findex Survey, p. 2. id4d.worldbank.org/global-dataset

81 Ibid.

because of “conservative traditions” and because an ID card was not viewed as an essential item for women. The study noted that this was particularly challenging for women from certain ethnic groups.⁸²

In September 2020, the government announced a plan to introduce mothers’ names along with fathers’ names on national identification cards. This would be an important symbolic step, since it would acknowledge a person’s mother as being part of that person’s identity. While many welcomed the announcement of the forthcoming legal change, many also feared that it might discourage people in conservative rural areas from registering for national identity cards.⁸³

Another interesting feature of the Afghan identification system is the law’s special provision on the issuance of ID cards to Kochi, nomadic residents of the country who move with their livestock. ID cards are to be issued to Kochi based on their summer or winter living location, after verification and certification of the person’s identity by a relative who holds an ID card and approval by a Kochi representative who is officially introduced by relevant authorities.⁸⁴ In practice, some other nomadic populations encounter difficulties of access because their representatives are not officially registered and so are not authorized to confirm identity, or because a general lack of registration by members of the group makes the requirement of verification by a documented relative impossible in practice.⁸⁵

Data protection

The concept of protection of personal data is not well developed in Afghanistan. Although the country has had an access to information law since December 2014, no data protection law is in force. Article 37 of the Constitution protects the “freedom and confidentiality of correspondence, as well as communications of individuals from intrusion.” Article 50 states: “The citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law. This right shall have no limit except when harming rights of others as well as public security.”

2020: Reacting to the COVID-19 pandemic

In August 2020, Afghanistan’s health minister said that nearly a third of Afghanistan’s population, or around 12 million people, had been infected with the coronavirus: this figure was based on a survey reportedly supported by the World Health Organization and Johns Hopkins University.⁸⁶

82 International Foundation for Electoral Systems. 2019. Violence Against Women in Elections in Afghanistan: An IFES Assessment, p. 15. ifes.org/sites/default/files/ifes_april_2019_vawe_in_afghanistan_assessment_final.pdf

83 Mashal, M. and Rahim, N. 2020. “After Afghan Women Asked #WhereIsMyName, a Small Victory.” *New York Times*, 2 September. nytimes.com/2020/09/02/world/asia/afghanistan-id-mothers-names.html; BBC News. 2020. “Afghan mothers’ names to be included on children’s ID cards.” 18 September. bbc.com/news/world-asia-54018913

84 *Law of 2014 on Registration of Population Records*, Arts 3, p. 24.

85 Kupperts, J. 2014. Stateless in Afghanistan. *Forced Migration Review*, 46, p. 9. fmreview.org/sites/fmr/files/FMRdownloads/en/afghanistan.pdf. See also Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report. n.d. Universal Periodic Review: AFGHANISTAN, p. 7. refworld.org/pdfid/51b81fa54.pdf

86 Quilty, A. 2020. Afghanistan’s Unseen COVID Crisis. *The Interpreter*. 12 August. lowyinstitute.org/the-interpreter/afghanistan-s-unseen-covid-crisis

The number of COVID-19–related deaths is likely to be vastly underreported, since most people who died from the virus likely never sought treatment. It has been suggested that some may avoid treatment due to fears that death from COVID-19 might result in being deprived of a proper Islamic burial.⁸⁷ While some provinces instituted lockdown measures during the COVID-19 crisis, no comprehensive information could be located on the impact of lockdown measures on civil registration.⁸⁸

Afghanistan created the Afghanistan National Disaster Management Authority in 1972; it also has a National Disaster Management Commission. All members of Cabinet are members of this commission, which is headed by the president. It is not clear whether the commission has played any role in managing the national response to the pandemic.

Chapter summary

Afghanistan faces steep development challenges and continues to be plagued by internal conflicts; it is ranked as one of the most fragile states in the world. However, the country seems to be on the right track with respect to improving registration of vital events and providing legal identity: it is consolidating the structure and capacity of its Central Civil Registration Authority based on the *Law on Registration of Population Records* that was enacted in 2014 and amended in 2017.

In a trend seen in most of the countries studied, Afghanistan is moving toward birth registration in health facilities, although the impact of this procedure will be tempered by the fact that many births take place at home.

There are legal procedures for some instances where documentation is lacking, such as the absence of a verifiable date of birth or registration of children of unknown parents, but it is difficult to determine how accessible these are in practice.

The national identity credential — which is moving from paper based to electronic — is tied to birth registration but is not limited to citizens. However, it indicates citizenship as well as ethnicity and religion.

A *tazkera* can be issued right after birth registration, and the law gives a child's guardian or lawful relative a duty to obtain a national identity card for the child before he or she reaches the age of 3 months. It is not clear that this duty is strictly enforced.

Since descent is the primary basis for citizenship, the family relations that are recorded in civil registration records are important. Recent decisions to record information about mothers on birth certificates and *tazkera* for the first time are significant, although many gender challenges remain.

Data protection has generally not received attention as a major issue of concern.

87 Ibid.

88 The World Bank reported in October 2020 that “the economy is estimated to have contracted sharply over the first half of 2020, due to the impacts of the COVID-19 crisis,” which could further exacerbate the response capacity. [worldbank.org/en/country/afghanistan/overview](https://www.worldbank.org/en/country/afghanistan/overview)

Georgia



Background and context

Georgia lies at the intersection of Europe and Asia by the Black Sea. It is a former Soviet republic; with Armenia and Azerbaijan, it forms part of the South Caucasus region. Leading up to and after the Soviet Union's collapse in 1991, Georgia underwent a series of incidents and struggles that have shaped the political landscape in the region and are relevant to the status of civil registration and identification today.

Table 4. Georgia at a glance.

Population	around 4 million ⁸⁹
Per capita GDP	US\$4,786 ⁹⁰
Classification in the 2019 Human Development Index	70 out of 189 countries ⁹¹
% of the population below the national poverty line in 2018	20% ⁹²
Number of ethnic groups	10 ⁹³
Official languages	Georgian and Abkhazian; Russian is also widely spoken

Table 5. Historical overview.

1917	Independence after being part of the Russian Empire for 116 years.
1921	The Red Army invades; Georgia is absorbed by the Soviet Union.
1991	Collapse of the Soviet Union; Georgia secedes following a referendum on independence. Zviad Gamsakhurdia is elected as the first president of independent Georgia, then deposed in a bloody coup that erupts into civil war.
1995	Georgia adopts a new Constitution, establishing the country as a democratic republic. Eduard Shevardnadze is elected president.
2000	Shevardnadze is re-elected.
2003	Shevardnadze is ousted through a peaceful revolution triggered by allegations of parliamentary electoral fraud. ⁹⁴
2004	Mikhail Saakashvili is elected president.
2008	Saakashvili is re-elected.
August 2008	Brief Russo-Georgian war.
2010	Parliament approves constitutional changes intended to reduce the powers of the president and expand the role of the prime minister and Parliament.
2012	Bidzina Ivanishvili, leader of the Georgian Dream party, becomes prime minister.

89 The last national census was in 2014. It does not include information about population in breakaway regions. See National Statistics Office of Georgia (Geostat). 2016. 2014 General Population Census Main Results. census.ge/files/results/Census_release_ENG.pdf

90 World Bank. n.d. The World Bank in Georgia: Overview. worldbank.org/en/country/georgia/overview

91 UNDP. 2019. Human Development Report 2019, p. 301. hdr.undp.org/sites/default/files/hdr2019.pdf

92 Asian Development Bank. n.d. Poverty Data: Georgia. adb.org/countries/georgia/poverty#:~:text=Poverty%20Data%3A%20Georgia,day%20in%202019%20is%203.6%25

93 National Statistics Office of Georgia. 2014 General Population Census Main Results.

94 Kandelaki, G. 2006. Georgia's Rose Revolution: A Participant's Perspective. *United States Institute of Peace Special Report 167*. usip.org/sites/default/files/sr167.pdf

Despite recent upheavals, the government has made efforts to combat corruption and strengthen institutions as part of its economic development and poverty reduction policies.⁹⁵ The World Bank recently described Georgia as having "a shared consensus on national priorities, including participation in Euro-Atlantic integration, more efficient government, stronger growth, and a better functioning welfare state."⁹⁶

Georgia has made steady progress in improving legal and regulatory frameworks, including many reforms to the laws relevant to citizenship and identity. The country displays a long-term positive trend with respect to the level of governance fragility.⁹⁷

Legal framework for establishing legal identity

Georgia is a civil law jurisdiction. The Constitution provides for two categories of laws:

- ▶ Ordinary laws, which require the support of a majority of members of Parliament present at their consideration (at least one-third of the total number of members of Parliament);
- ▶ Organic laws, which require the support of a majority of the total number of members of Parliament (Art. 45(2)).

Table 6 lists the laws relevant to citizenship and civil registration in Georgia.

Table 6. Georgia's legal framework for establishing legal identity.

Law	Date of approval or most recent amendment	Comments
<i>Constitution of Georgia</i>	2018	Initial Constitution passed in 1995
<i>Organic Law of Georgia on Georgian Citizenship</i>	2014	
<i>Law of Georgia on International Protection</i>	2016	Key law on refugees
<i>Law of Georgia on Civil Status Acts</i>	2018	From 2011. The most recent English version of this law available at the time of writing contains only amendments made through 5 July 2018 and thus omits amendments dated 22 December 2018, 22 February 2019, and 15 July 2020.
<i>Civil Code of Georgia</i>	2020	Passed in 1997
<i>Law of Georgia on the Legal Status of Aliens and Stateless Persons</i>	2020	Passed in 2014

⁹⁵ OECD. 2016. Anti-corruption Reforms in Georgia.
oecd.org/corruption/acn/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf

⁹⁶ World Bank. The World Bank in Georgia: Overview.

⁹⁷ Taft, P. 2019. The Caucasus Give Cause for Cautious Optimism. Fragile States Index.
fragilestatesindex.org/2019/04/06/the-caucasus-give-cause-for-cautious-optimism

Law	Date of approval or most recent amendment	Comments
<i>Law of Georgia on the Procedures for Registering Citizens of Georgia and Aliens Residing in Georgia, for Issuing Identity (Residence) Cards and Passports of a Citizen of Georgia, Law of Georgia n°181 of 24 June 2004</i>	2017 (latest amendments reflected in online version)	Passed in 2004

Constitution

The Constitution, adopted in 1995, has been amended numerous times, most recently in 2018.⁹⁸ It refers to Georgia as “an independent, unified and indivisible state” that includes Abkhazia and South Ossetia and emphasizes the country’s “territorial integrity” and the “inviolability of the state border” (Art. 1).

The Constitution provides that all persons are equal before the law. It prohibits discrimination based on race, colour, sex, origin, ethnicity, language, religion, political or other views, social affiliation, and place of residence. It promises all persons, regardless of ethnic and religious affiliation or language, the right to maintain and develop their culture without discrimination. It also provides that the state must “provide equal rights and opportunities for men and women” and “take special measures to ensure the essential equality of men and women and to eliminate inequality” (Art. 11).⁹⁹

The Constitution recognizes the special status of the “Apostolic Autocephalous Orthodox Church of Georgia” but also promises freedom of belief and religion. It states explicitly that the Church in question is independent from the State but provides that the relationship between the State and the Church “shall be determined by a constitutional agreement” (Arts 8, 16).

Basis of legal identity in Georgia

The Constitution sets out a number of issues that are the exclusive responsibility of the supreme state authorities of Georgia, including “Georgian citizenship, migration, entry into and exit from the country, and the temporary or permanent stay of aliens and stateless persons in Georgia” (Art. 7(1)(a)). It also contains the following provisions on citizenship, aliens, statelessness, and asylum seekers:

⁹⁸ The Constitution is available in English on the website of the Georgian Parliament, parliament.ge/en/ajax/downloadFile/131642/constitution-of-georgia, and on the Constitute website, constituteproject.org/constitution/Georgia_2018.pdf?lang=en.

⁹⁹ This point in the Constitution is supported by the *Law of Georgia on the Elimination of All Forms of Discrimination 2014*, which aims “to eliminate every form of discrimination and to ensure equal rights of all natural and legal persons under the legislation of Georgia, irrespective of race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics” (Art. 1).

Article 32 – Citizenship of Georgia

1. Georgia shall protect its citizen regardless of his/her location.
2. Citizenship of Georgia shall be acquired by birth or naturalization. The procedures for acquiring and losing the citizenship of Georgia, the conditions and procedures for granting citizenship of Georgia to a foreign citizen and the conditions for holding citizenship of another state by a citizen of Georgia shall be determined by the organic law.
3. The deprivation of citizenship shall be inadmissible.
4. The expulsion of a citizen of Georgia from Georgia shall be inadmissible.
5. The transfer of a citizen of Georgia to a foreign state shall be inadmissible except in cases provided for by an international treaty. The decision to transfer a citizen may be appealed to the court.

Interestingly, Article 33 of the Constitution recognizes the rights of aliens and stateless persons:

1. Citizens of other states and stateless persons living in Georgia shall have rights and obligations equal to those of citizens of Georgia except in cases provided for by the Constitution and law.
2. The State shall be entitled to impose restrictions on the political activities of citizens of other states and stateless persons.
3. Georgia shall grant asylum to citizens of other states and stateless persons in compliance with universally recognised norms of international law, in accordance with the procedures established by law.
4. The expulsion or extradition of persons from Georgia in violation of universally recognised principles and norms of international law shall be inadmissible.

Criteria for citizenship

All citizens of Georgia are equal under the law,¹⁰⁰ no matter how citizenship was acquired.

According to the *Organic Law of Georgia on Georgian Citizenship*, Georgian citizenship may be acquired "by birth" and "by naturalisation."

Citizenship by birth: Citizenship by birth can be acquired in four ways:

- a) Birth to at least one parent who is a Georgian citizen (with no distinction based on sex);
- b) Birth in Georgia through surrogacy, if the child is not recognised as a citizen of the country of citizenship of either of the parents;

¹⁰⁰ *Organic Law on Georgian Citizenship*, Arts 3(2), 4(1). The Articles cited in the text of this section on citizenship refer to the provisions of this law.

- c) Birth in Georgia to parents who are both stateless;
- d) Birth in Georgia to one stateless parent where the other parent is unknown. (Art. 10)

A child whose parents are both unknown "shall be deemed to be a Georgian citizen unless proved otherwise" (Art. 11).

Citizenship by naturalization: Citizenship by naturalization can be acquired in four ways. It can be denied on various state and public security grounds (Art. 16), and it requires renunciation of the citizenship of a foreign country unless the application is based on citizenship by exception (Art. 15).

- a) *Regular procedure:* This requires lawful residence in Georgia for 10 consecutive years, up until the date of application for Georgian citizenship. The applicant must also demonstrate knowledge of the official language of Georgia, the history of Georgia and the basic principles of Georgian law, and a financial connection to the country in the form of a job and/or real estate, conducting business in Georgia, or holding an interest or shares in a Georgian enterprise. Children in certain circumstances also have a right to Georgian citizenship by means of the regular procedure; this applies to a minor who did not acquire citizenship by birth but was born to a Georgian citizen, a minor adopted by a Georgian citizen, and a minor born in Georgia who is stateless or has refugee status and has lived in Georgia for five years (with minors in this last category being exempt from the usual verification that there are no state or public security objections) (Art. 12).
- b) *Simplified procedure:* This applies to a spouse of a Georgian citizen who has lawfully and continuously resided in Georgia for the five years prior to the date of the citizenship application. The applicant must have knowledge of the official language of Georgia, the history of Georgia, and the basic principles of Georgian law (as in the case of the regular procedure), unless the person in question is being repatriated to Georgia (Art. 14).
- c) *By way of exception:* The president of Georgia may grant Georgian citizenship to a citizen of another country who has made a contribution of exceptional merit to Georgia, or on the basis of "state interests" — these apply in circumstances relating to investment; success in sport, science, or art; or where a foreign citizen considers Georgia his or her homeland but is residing in an occupied territory of Georgia, is internally displaced from the territory, or "emigrated in different times for political opinions or for hard social and economic conditions" (or is a descendant in a direct line within five generations of a person in one of those circumstances) (Art. 17).
- d) *By way of restoration:* This applies to a person whose citizenship was terminated unlawfully, or by renunciation, or because of the choice of that person's parent(s). Except in cases where Georgian citizenship was unlawfully terminated, a person seeking citizenship by restoration must know the official language of Georgia (Art. 18).

Protection and citizenship for refugees: The key law on refugees is the 2016 *Law of Georgia on International Protection*. It provides for three categories of international protection: refugee status, humanitarian status, and temporary protection.¹⁰¹

Humanitarian status applies when a person does not meet the requirements for refugee status but will nevertheless face a serious threat of damage if he or she returns to the country of origin.¹⁰² Temporary protection applies to the mass entry of people who cannot return to their country of origin due to violence, aggression, international or internal armed conflict, or mass violation of human rights.¹⁰³ Both humanitarian status and temporary protection last for one year and can be extended. (Temporary protection allows the people in question time to apply for refugee status, if applicable.)¹⁰⁴

The law explicitly states that a person who holds refugee or humanitarian status in Georgia may apply for citizenship by naturalization in the same way as any other person.¹⁰⁵ Even before this law was enacted, UNHCR reported in 2011 that virtually all refugees who opted for local integration had become naturalized Georgian citizens.¹⁰⁶

However, more recently, according to the 2019 Human Rights Report published by the U.S. Department of State, 22 percent of the 699 Chechen refugees in Pankisi who applied for citizenship by naturalization were unsuccessful; some were rejected for failure to pass the required language and history tests and others on national security grounds.¹⁰⁷ This report also noted concerns about the implementation of the citizenship law with respect to refugees, citing a report from UNHCR that citizenship applications by refugees from Syria, Eritrea, Afghanistan, Iraq, Iran, and Yemen were “being rejected automatically on national security grounds, without a thorough examination on a case-by-case basis of the threat posed by the individual applicants.” It also noted that these rejected citizenship applicants were rarely deported or detained, suggesting that they did not pose a meaningful security threat.¹⁰⁸ Yet the same report also stated that the Public Defender’s Office reported in July 2019 that it did not find “any violations

101 *Law of Georgia on International Protection*, Art. 14.

102 *Ibid.*, Art. 18.

103 *Ibid.*, Art. 21. The Georgian Ministry of Refugees and Accommodation explains that this group procedure was adopted to address the mass influx of persons after the 1999 war in the Chechen Republic of the Russian Federation, when “the need to provide assistance was extremely urgent and it became impossible for purely practical reasons to carry out an individual determination of refugee status. The State, therefore, addressed the so-called ‘group determination’ of refugee status, whereby each member of the group was regarded *prima facie* as a refugee. In 1999, Georgia granted status of ‘prima facie refugee’ to some 7,000 people. They settled in Pankisi Gorge close to their ethnic relatives — Kist people.” Ministry of Refugees and Accommodation. 2020. Refugee Issues – General Information. mra.gov.ge/eng/static/705

104 Refugee issues were previously administered by the Ministry of Internally Displaced Persons from the Occupied Territories, Refugees, and Accommodation, but this portfolio was transferred to the Ministry of Internal Affairs in 2018. U.S. Department of State, Bureau of Democracy, Human Rights and Labor. 2019 Country Reports on Human Rights Practices: Georgia, s. f.

105 *Law of Georgia on International Protection*, Art. 58(h).

106 UNHCR. 2011. Georgia. [unhcr.org/en-ie/4fc880b9b.pdf](https://www.unhcr.org/en-ie/4fc880b9b.pdf). This source states that 230 individuals exercised this option but provides no other details on their naturalization process.

107 U.S. Department of State, Bureau of Democracy, Human Rights and Labor. 2019 Country Reports on Human Rights Practices: Georgia, s. 2.f.

108 *Ibid.*

of foreign nationals' rights in the government's refusal to grant citizenship, asylum or refugee status, or residency permits on national security grounds after reviewing the government's confidential considerations in some cases."¹⁰⁹

Citizenship for stateless persons: In 2011, UNHCR reported that improvements in Georgia's law on citizenship to make it compliant with the 1954 Convention relating to the Status of Stateless People, coupled with increased advocacy and legal advice for stateless individuals, had resulted in reducing the number of registered stateless people in the country from 2,000 to fewer than 1,600.¹¹⁰

According to UNHCR, 2016 amendments to the citizenship law allowing local authorities to prove the physical presence of a person in Georgia based on the testimonies of relatives, friends, and other witnesses have made citizenship by naturalization more accessible to stateless persons who lack documentation such as birth certificates.¹¹¹ This approach is an example of attention to the problem of missing documentation that is particularly relevant to post-conflict situations.

Proof of citizenship: The law on identity cards explicitly provides that an ID card is sufficient to certify the holder's Georgian citizenship.¹¹² When a person is too young to have an ID card, citizenship can be proved by an original birth certificate.¹¹³ Passports may also be used as proof of citizenship, both inside and outside Georgia.¹¹⁴

Efforts to upgrade the civil register

Although civil registration in Georgia (via the Soviet Union) officially began in 1921, its Central Historical Archive had maintained records on births, deaths, and marriages occurring between 1819 and 1921.¹¹⁵ Once the Soviet Union absorbed Georgia, the registration of its population and its vital events fell under the Soviet umbrella. Only a limited amount of population data collected by the Soviet Union was made public; much of the data collected was used only internally by government or other authorized officials.¹¹⁶

¹⁰⁹ Ibid.

¹¹⁰ UNHCR. 2011. Georgia. According to UNHCR, "Individual meetings were held and counselling by phone conducted with 800 stateless persons, of whom 337 were naturalized in Georgia or granted citizenship by another country."

¹¹¹ Cherednichenko, V. and Kajaia, N. 2018. Citizenship Opens New World for Stateless Man from Georgia. UNHCR. 12 February. [unhcr.org/en-us/news/stories/2018/2/5a7083274/citizenship-opens-new-world-stateless-man-georgia.html](https://www.unhcr.org/en-us/news/stories/2018/2/5a7083274/citizenship-opens-new-world-stateless-man-georgia.html)

¹¹² Law n°181, Art. 12(1).

¹¹³ See, for instance, Public Service Development Agency website, n.d. Passport of Citizen of Georgia. sda.gov.ge/?page_id=7417&lang=en

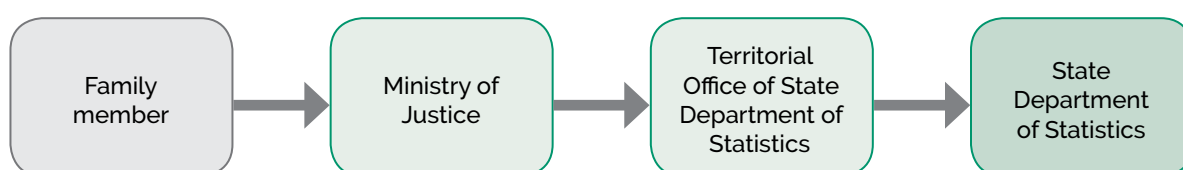
¹¹⁴ Law n°181, Art. 211(1).

¹¹⁵ National Statistics Office of Georgia. 2019. Vital Statistics 2018, p. 9. geostat.ge/media/26803/2019.09.25---VS-Report-%28eng%29.pdf

¹¹⁶ Anderson, B.A. et al. 1994. Developments and Prospects for Population Statistics in Countries of the Former Soviet Union. Population Index, 60:1, pp. 4–20. [jstor.org/stable/pdf/3645322.pdf](https://www.jstor.org/stable/pdf/3645322.pdf): "Many people still think that since the Soviet Union was a centrally planned economy, there was complete and effective monitoring of the population, and that population size and the number of demographic events, such as births and deaths, was completely recorded. A substantial body of Soviet and Western research shows this is not true" (p. 7).

Following the Soviet Union's collapse, the civil registration system in place in Georgia also deteriorated. From the 1990s to 2003, civil registration had to be initiated by the request of a family member to the Ministry of Justice, with registration information from territorial offices being processed by the State Department of Statistics and documentation and then returned to the territorial offices (Figure 3). Fees were a disincentive to citizens registering vital events.¹¹⁷

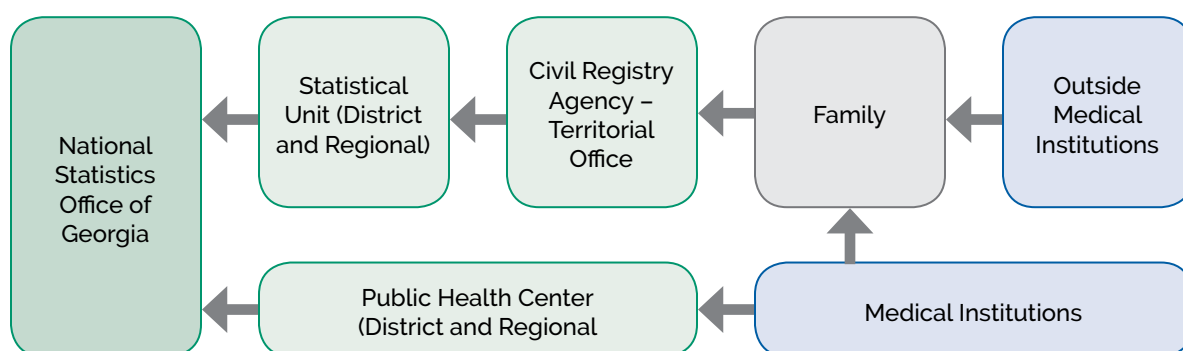
Figure 3. Civil registration process prior to 2003.



Source: National Statistics Office of Georgia (2018).

A 2003 Presidential Decree established a new system requiring medical institutions to provide information on births and deaths directly to the State Department of Statistics to supplement the civil acts reported by family members (Figure 4). The State Department of Statistics matched and merged data from both sources and then produced final statistics on civil registration.

Figure 4. Georgian civil registration system 2003–2008.



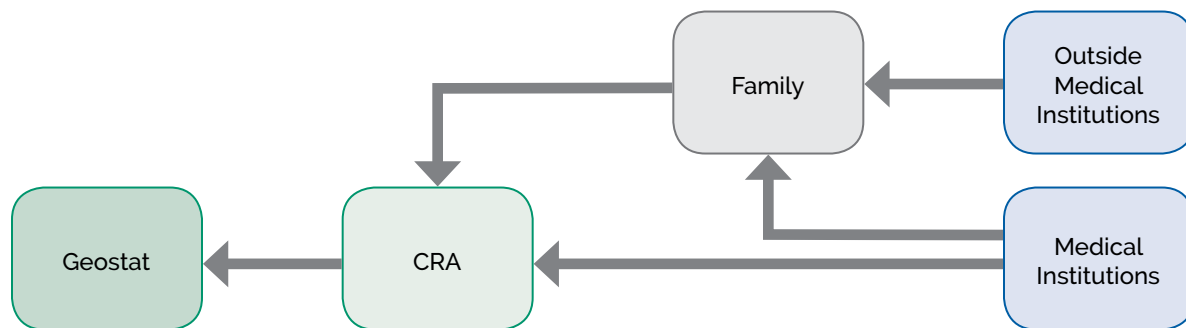
Source: National Statistics Office of Georgia (2018).

The next reform required medical institutions to register births and deaths with the Civil Registry Agency, which was created in 2004, rather than the State Department of Statistics: family members now had to register only births and deaths that took place outside a medical institution. The objective was “to provide the public with a simple one-stop-shop access to civil acts registration, identity documentation and passport and enable the regulated and safe exchange of sensitive information between State institutions in accordance with laws and prescribed procedures.”¹¹⁸

117 National Statistics Office of Georgia. Vital Statistics 2018, pp. 9–10.

118 United Nations Development Programme. 2010. Assessment of Development Results: Georgia, p. 32.
oecd.org/countries/georgia/47861316.pdf

Figure 5. Georgian registration system 2009–2010.



Source: National Statistics Office of Georgia (2018).

In 2011, the paper-based medical certificates that medical institutions completed were replaced with electronic ones. These were automatically transmitted to the civil registration authority, which was now part of the Public Services Development Agency (PSDA), under the Ministry of Justice.¹¹⁹

A 2012 amendment to the law on civil registration recognized documents issued by "unlawful bodies" in Georgia's Occupied Territories for birth and death registration. This amendment also allowed marriage and/or divorce documents issued in the Occupied Territories to be used to determine parent data and other facts of legal significance for purposes of birth registration. These concessions were important steps forward in addressing the needs of civil registration in a post-conflict setting.¹²⁰

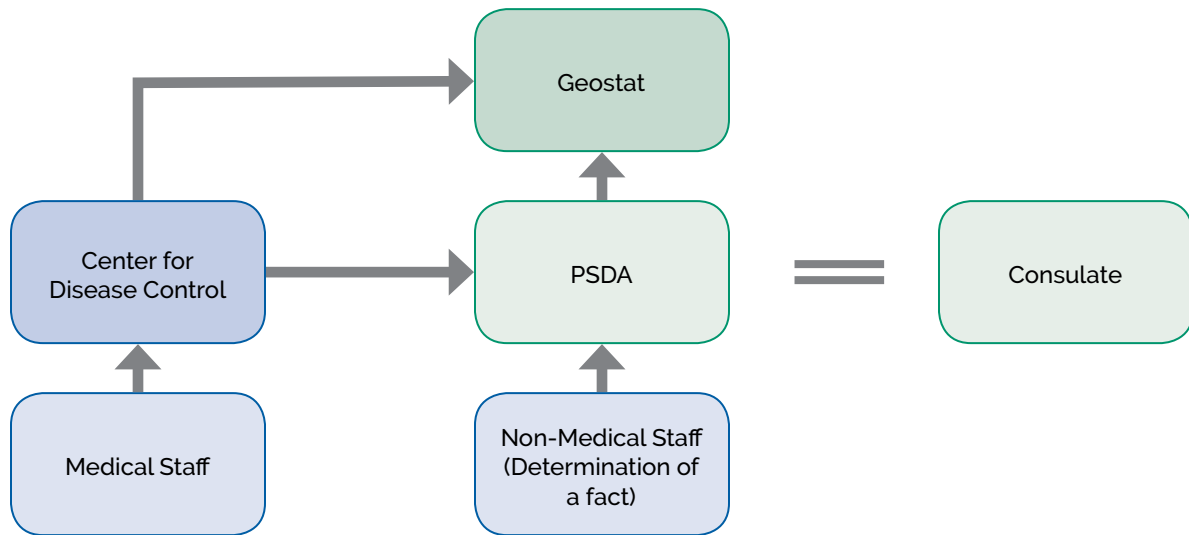
Further changes, introduced in 2017, were designed to improve the quality of civil registration. The National Center for Disease Control and Public Health took on new responsibility for confirming the facts in medical certificates of birth and death (Figure 6).¹²¹

119 National Statistics Office of Georgia. Vital Statistics 2018, p. 11.

120 International Covenant on Civil and Political Rights. 2020. Fifth periodic report submitted by Georgia under article 40 of the Covenant, due in 2019. paragraph 29. CCPR//C/GEO/5, 28 April, para. 290. tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGEO%2f5&Lang=en. This move appears to be part of the Georgian government's attempt to make "all efforts to improve the humanitarian and social-economic conditions of the population living in the occupied regions and adjacent territories." National report submitted in accordance with para. 5 of the annex to Human Rights Council resolution 16/21: Georgia (Advance Version). 2020. A/HRC/WG.6/37/GEO/1. 20 December, para. 29.

121 National Statistics Office of Georgia. Vital Statistics 2018, pp. 11–12.

Figure 6. Current registration system in Georgia.



Source: National Statistics Office of Georgia (2018).

The PSDA has set up local community centres where residents can access more than 200 services offered by public and private organizations in their home villages, including civil registration. The government reports that 74 community centres were operational throughout the country as of December 2019, including in regions with national and ethnic minorities.¹²² These innovative centres evolved from public service halls designed to combine various governmental one-stop shops at a single location, with improved approaches to civil registration serving as a model for other government services. According to one 2017–2018 report, the average waiting time for a transaction at these centres is 3 to 4 minutes, with service provision averaging another 7 minutes. Services are divided into three areas: “quick,” “long,” and self-service: obtaining an ID card or a birth or marriage certificate is in the “quick” category and can be performed in under 2 minutes. Innovations in recent years include drive-through windows, on-site cafés, special areas for foreigners, a new baby kit for all low-income parents of newborns, and social and farming services.¹²³

The Civil Registry Agency also reportedly runs a special program for distance services, including sign-language interpreters for hearing-impaired people at specified hours to assist with birth certificates, marriage certificates, divorce certificates, paternity establishment, and name change certificates.¹²⁴

122 Fifth periodic report submitted by Georgia under article 40 of the International Covenant on Civil and Political Rights. Received by the Human Rights Committee on 14 February 2020, CCPR/C/GEO/5, 28 April 2020, paras 292–293. undocs.org/CCPR/C/GEO/5. See also United Nations Universal Periodic Review Mid Term Report Georgia. 2019. Recommendation 117.87. lib.ohchr.org/HRBodies/UPR/Documents/session23/GE/UPR2ndCycle_midterm.pdf

123 Ma-Dupont, V. 2017/2018. Georgia: ‘Public Service Halls,’ Placing Innovation at the Service of Citizens. Responsive Public Management, p. 99.

124 Public Service Development Agency Service Labs. n.d. Follow-up Project on PSDA’s ‘Distance Services’ for Persons with Disabilities. servicelab.sda.gov.ge/en/reforms/eng-case-study-follow-up-project-on-psdas-distance-services-for-persons-with-disabilities

The Agency's website says that it also provides an Electronic Register of Applications that allows applicants to monitor their application and learn the final decision.¹²⁵

According to Geostat, the country's national statistics office, the new electronic system has virtually eliminated Georgia's previous issues with late registration of births. In 2018, 93.6 percent of newborns were reportedly registered in the same month they were born.¹²⁶ Birth registration is mandatory for medical institutions and for parents (where the birth takes place outside a medical institution); there are fines for non-compliance. Geostat also identifies the following social benefits, which are premised on civil registration, as contributing to the high level of birth registration:

- ▮ A universal healthcare program that covers pregnancy and childbirth expenses at medical institutions;
- ▮ A social assistance program that provides a subsistence allowance;
- ▮ Monetary incentives to families of newborn children in regions where natural population growth is low.¹²⁷

It may also be helpful that Georgia provides the possibility of separating birth registration and paternity establishment; a father may be identified at the time a birth is registered or at a later stage.¹²⁸

Similarly, the increased efficiency of the electronic registration system has produced improvements to death registration coverage. In 2018, 91.4 percent of deaths were reportedly registered in the month they occurred.¹²⁹ Another factor is that it is difficult to get permission for the burial of a deceased person without death registration.¹³⁰ Steps identified as having improved the quality of death registration include the following:

- ▮ Introduction of a long and short form of medical certificate, and the new role of the National Center for Disease Control in monitoring the quality of the completed certificates;
- ▮ Links between the death registration system and other registers;
- ▮ Adoption of verbal autopsies;

125 Public Service Development Agency Service. n.d. Electronic Register of Applications. services.sda.gov.ge/index#/extApp/questionsAndAnswers

126 National Statistics Office of Georgia. Vital Statistics 2018, p. 21. This report provides no information on what categories of births tend to be registered late or not at all.

127 Ibid., p. 15; UNICEF. 2016. Social Assistance Description and Recommendations 2014–2016: Analysis of Social Benefits/Assistance Provided to the Population of Georgia by Central and Municipal Governments, p. 26. [unicef.org/georgia/media/1216/file/Mapping.pdf](https://www.unicef.org/georgia/media/1216/file/Mapping.pdf). See also Government of Georgia. 2020. Measures Implemented by the Government of Georgia Against COVID-19: Report, p. 39. gov.ge/files/41_76497_133739_COVIDRESPONSEREPORTGoG_ENG.pdf: "Under the State program for improvement of the demographic situation in the country, the families residing in the Georgian regions, where the child birth rates have been falling, have been and are still given the monthly allowance for the third etc. child of 200 GEL (mountainous regions) and 150 GEL elsewhere."

128 *Law of Georgia on Civil Status Acts*. Arts 31, 37.

129 National Statistics Office of Georgia. Vital Statistics 2018, p. 25.

130 Ibid., p. 10.

- Introduction of the office of coroner, a public officer whose primary function is to investigate any death suspected as being of unnatural causes.¹³¹

The PSDA also handles registration of marriages and divorces, but the level of coverage for registration of these civil events could not be ascertained.¹³²

Identity cards

The PSDA issues two basic forms of identity documents:

- Identity cards, which are issued only to citizens of Georgia;
- Residence cards, which may be temporary or permanent. A permanent residence card is valid for 5 years. A temporary residence card issued to a refugee is valid for 3 years. A temporary residence card issued to a person with humanitarian status or temporary protection is valid for the period of that status or protection.

A citizen ID card serves as proof of the holder's Georgian citizenship, identity, and place of residence, while a residence card issued to a foreign national residing in Georgia is proof of that person's citizenship, identity, and place of residence in Georgia.¹³³

A unique personal identification number is normally assigned at the time of birth registration.¹³⁴ All citizens must obtain an ID card within six months of reaching age 14, and younger citizens may obtain an ID card if they wish. However, the law specifically states that registration or lack of registration "may not be the grounds for restricting the constitutional rights and freedoms of citizens of Georgia and aliens residing in Georgia," nor may it be a condition for exercising such rights and freedoms, except as provided for in electoral legislation.¹³⁵ This kind of guarantee of non-discrimination is useful in any society, but can be particularly important in the aftermath of conflict situations, which may have entailed obstacles to obtaining documentation.

131 Paata Shavishvili, P. (Geostat) and Arabidze, M. (PSDA). 2017. CRVS in Georgia, slide 10. Workshop for selected National CRVS Focal Points, 1214 December. slideplayer.com/slide/14398926

132 According to Geostat, there were 23,202 registered marriages and 10,288 registered divorces in 2018. National Statistics Office of Georgia. Vital Statistics 2018, p. 29.

133 *Law of Georgia on the Procedures for Registering Citizens of Georgia and Aliens Residing in Georgia, for Issuing Identity (Residence) Cards and Passports of a Citizen of Georgia*, Law of Georgia no181 of 24 June 2004, Arts 2, 12. Article 12 states:

1. An ID card of a citizen of Georgia shall certify the citizenship of Georgia, the identity, and the place of residence of a person.
2. A residence card shall certify the citizenship of an alien residing in Georgia, his/her identity, and the place of residence within Georgia.
3. A temporary residence card issued to a person with international protection may certify his/her citizenship, identity, status, and place of residence in the territory of Georgia.
4. A temporary ID card shall certify the citizenship, identity, and status of a person staying in Georgia.

134 *Law of Georgia on Civil Status Acts*, Art. 27.

135 *Law of Georgia on the Procedures for Registering Citizens of Georgia and Aliens Residing in Georgia, for Issuing Identity (Residence) Cards and Passports of a Citizen of Georgia*, Art. 2(3).

Both electronic and non-electronic ID credentials are currently in use. An ID card issued to a citizen under age 18 is valid for four years; for persons aged 18 or over, it is valid for 10 years.¹³⁶

Recent amendments to the law provide for the issuance of temporary identification numbers to homeless children who lack birth registration documents.¹³⁷ It has also been reported that particular efforts have been made to resolve issues related to ID documents, birth registration, and citizenship with respect to Roma people.¹³⁸

Data protection

Data protection is part of the Constitution of Georgia. Art. 18(2) protects the right of access to one's personal information:

Everyone has the right to be familiarized with information about him/her, or other information, or an official document that exists in public institutions in accordance with the procedures established by law, unless this information or document contains commercial or professional secrets, or is acknowledged as a state secret by law or in accordance with the procedures established by law as necessary in a democratic society to ensure national security or public safety or to protect the interests of legal proceedings.

Article 18(3) of the Constitution safeguards personal information in official records against disclosure without consent or legal authority based on the public interest:

The information contained in official records pertaining to an individual's health, finances or other personal matters shall not be made available to anyone without the consent of the individual, except as provided for by law and as is necessary to ensure national security or public safety, or to protect public interests and health or the rights of others.

Furthermore, the general right to information is protected by the Constitution but may be restricted on several grounds, including "the prevention of the disclosure of information recognized as confidential" (Art. 17(5)).

Article 15(1) provides specific protection for "personal and family privacy":

Personal and family life shall be inviolable. This right may be restricted only in accordance with law for ensuring national security or public safety, or for protecting the rights of others, insofar as is necessary in a democratic society.

¹³⁶ Ibid., Art. 14(2).

¹³⁷ Fifth periodic report submitted by Georgia under article 40 of the International Covenant on Civil and Political Rights, paras 166, 291. See also United Nations Universal Periodic Review Mid Term Report: Georgia. 2019. Recommendation 117.87. lib.ohchr.org/HRBodies/UPR/Documents/session23/GE/UPR2ndCycle_midterm.pdf

¹³⁸ Fifth periodic report submitted by Georgia under article 40 of the International Covenant on Civil and Political Rights, para. 294. See also United Nations Universal Periodic Review Mid Term Report: Georgia, Recommendation 117.87. lib.ohchr.org/HRBodies/UPR/Documents/session23/GE/UPR2ndCycle_midterm.pdf

According to the *Law of Georgia on Personal Data Protection*, the legality of data processing is monitored by an independent Personal Data Protection Inspector nominated by a selection committee¹³⁹ and elected by Parliament from persons nominated by the committee. This inspector is located within the Office of the State Inspector, an independent state authority.¹⁴⁰

Table 7. Applicable laws for data protection.

Law	Date approved or most recent amendment	Comments
<i>Law of Georgia on Personal Data Protection</i>	2011	
<i>Law of Georgia on Civil Status Acts</i>	2011	
<i>Law of Georgia on the Legal Status of Aliens and Stateless Persons</i>	2014	
<i>Civil Code of Georgia</i>	1997	
<i>The Law of Georgia on the Procedures for Registering Citizens of Georgia and Aliens Residing in Georgia, for Issuing Identity (Residence) Cards and Passports of a Citizen of Georgia, Law n°181</i>	1996	
<i>Code on the Rights of the Child</i>	2019	Art. 71

With respect to permissible data sharing, the *Law of Georgia on Civil Status Acts* provides that a civil registration authority must issue a civil registration certificate based on the civil records in its database at the request of an authorized person. The persons authorized to receive such certificates are as follows:

- ▮ Capable persons of full age may access civil registration data about themselves;
- ▮ Death registration data is available to any person;
- ▮ Government ministries, public departments, judicial bodies, and other entities or persons exercising powers under public law may receive civil registration information that is necessary for the exercise of their powers;
- ▮ A civil registration authority may also be required to issue an original copy of a civil record for examination, by a decision of an investigative body or a court judgement; and
- ▮ Civil registration data shall be available to a competent authority of another country where this is stipulated by an international treaty or agreement of Georgia.

¹³⁹ The selection committee is established by the prime minister and must include:

- a) A representative of the Government of Georgia;
- b) The chairperson of the Human Rights and Civil Integration Committee of the Parliament of Georgia;
- c) The vice-president of the Supreme Court (appointed as member of the Committee by the president of the Supreme Court of Georgia);
- d) The Public Defender of Georgia or a representative of the Public Defender's Office;
- e) A person appointed by the Public Defender of Georgia from among members of a non-entrepreneurial (non-commercial) legal person that has experience in the area of data protection (Art. 28(2)).

¹⁴⁰ State Inspector's Service website. n.d. pdp.ge/en/about-us

These authorized persons may be issued with copies of a civil record other than a record of birth or adoption.¹⁴¹

The *Law of Georgia on the Procedures for Registering Citizens of Georgia and Aliens Residing in Georgia, for Issuing Identity (Residence) Cards and Passports of a Citizen of Georgia* provides for the sharing of information from its database with both public and private bodies. Personal data related to a person's registration or identity document may be shared under a contract with a private business entity or a non-commercial legal entity only with the consent of the data subject — but consent may be presumed from the circumstances of an individual's relationship with the entity requesting the data.¹⁴²

2020: Reacting to the COVID-19 pandemic

Georgia is unusual among the countries examined in that it enacted an order specifically to address altered procedures for civil registration and identification services during the COVID-19 pandemic.¹⁴³ This order allowed for booking online for in-person appointments, sending documents by mail, and providing certain services electronically where the electronic communication allowed for direct visual contact with the applicant and the identity of the applicant could be verified by information in the PSDA's electronic database.

Among the services permitted to take place remotely were the following:

- ▶ Reissuance of an electronic identity card;
- ▶ Repeated issuance of civil status registration certificates (including birth and death certificates);
- ▶ Issuance of a certificate of no impediment to a marriage;
- ▶ Issuance of a name change certificate in certain enumerated circumstances; and
- ▶ Registration of natural persons according to their place of residence.

An interesting innovation was a procedure for bringing certain services to the customer, following an initial telephone consultation on a hotline number. The specified transactions could be initiated by telephone and then completed at an address specified by the applicant, where the applicant was age 70 or older or unable to be mobile due to his or her health status. The services that could be accessed in this way included the following:

- ▶ Initial issuance of an electronic identity card, or an electronic residence card;
- ▶ Issuance of a non-electronic identity card; and
- ▶ Registration according to place of residence, in certain situations.

¹⁴¹ *Law of Georgia on Civil Status Acts*, Arts 6–7.

¹⁴² *Law of Georgia on the Procedures for Registering Citizens of Georgia and Aliens Residing in Georgia, for Issuing Identity (Residence) Cards and Passports of a Citizen of Georgia*, Law of Georgia no181, Art. 20(3)–(4).

¹⁴³ Minister of Justice Order No 543, dated 25 May 2020, On determining provisional procedures different from those established by legislation for the administration of activities and provision of services to persons by the Legal Entity under Public Law called the Public Service Development Agency in order to prevent the spread of the novel coronavirus (COVID-19). The order was issued pursuant to the Law of Georgia on Public Health. matsne.gov.ge/en/document/download/4877263/1/en/pdf

The order also provided for administrative proceedings to take place without an oral hearing or with an oral hearing carried out by means of electronic communication. It authorized meetings of the Commission on Citizenship issues to be held electronically. Marriages could continue to be registered, but only at Agency offices. The option of special ceremonial services was not available during the period covered by the order.

The varied approaches to providing services during the pandemic appear to have been an attempt to keep as many services running as possible without compromising public safety, to prevent backlogs, and to minimize inconvenience to the public.

Chapter summary

Georgia offers an interesting lesson in long-term concerted and coherent strengthening of the legal and regulatory framework to ensure universal registration of civic events and legal identity for all. The services for civil registration and identification are located within the same agency and are linked with e-government services.

The involvement of health facilities in birth registration has gone further in Georgia than in many other countries: parents have a duty to register a child's birth only where this has not been done by a medical institution.

Georgia has made a number of concessions and innovations to assist with situations where documentation may be lacking:

- ▶ Allowing a range of evidence to prove the specified period of residence for purposes of citizenship by naturalization;
- ▶ Recognizing documents issued by "unlawful bodies" in its Occupied Territories for certain civil registration purposes; and
- ▶ Allowing identity cards to serve as certification of citizenship.

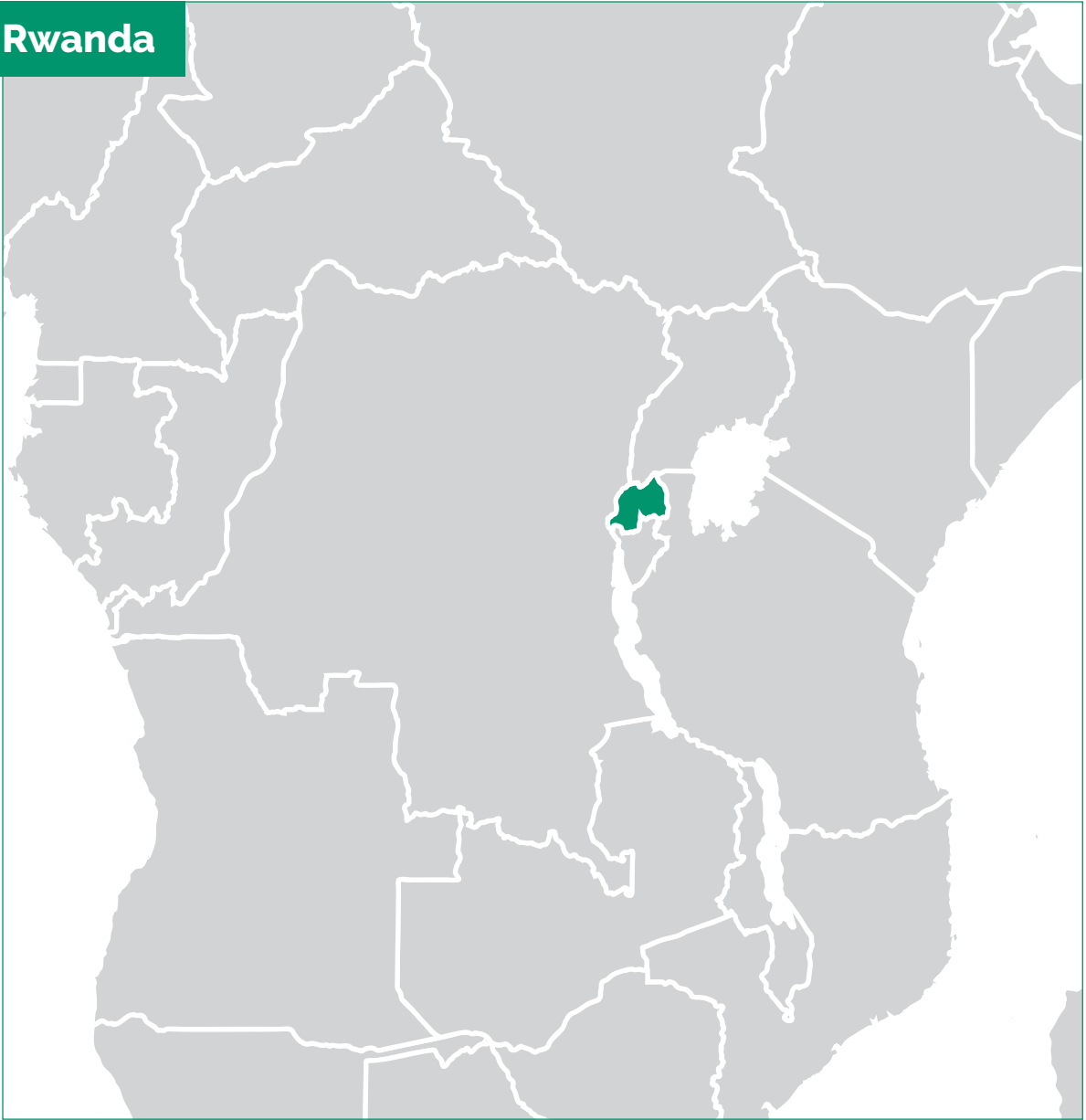
Identity cards are issued to both citizens and non-citizen residents, but the cards are of different types. Citizenship is indicated on all types of ID cards, which serve as proof of that information. Identity cards are mandatory for citizens from age 14, but failure to register for an ID is explicitly prohibited from serving as a basis for restricting the constitutional rights and freedoms of citizens or non-citizens (aside from the right to vote). The country provides an inclusive path to citizenship and has made good progress in reducing statelessness.

It should be noted that the citizenship referred to in Georgian law as being "by birth" is mainly based on parentage, which creates a strong link between birth registration and citizenship, but there is also an element of *jus soli* in that children born in Georgia who would otherwise be stateless receive Georgian citizenship "by birth."¹⁴⁴

Georgia is also noteworthy for its attention to customer service; this is marked by innovative efforts to make civil registration and identification services convenient and accessible to all.

Georgia has a strong framework for protection of personal data, although a fairly broad range of public and private individuals and entities have a legal right to obtain certain civil registration and identification data. It is not clear what happens when these rights of access to information collide with the principles of data protection.

Rwanda



Background and context

The Republic of Rwanda is a landlocked country. Its history is marked by severe challenges, including colonization, genocide, and civil war, but the post-genocide era has in many ways unified the country. The current political organization of Rwanda as a unitary presidential system with centralized power has facilitated the creation of a centralized identity management system.

Table 8. Rwanda at a glance.

Population	around 12.6 million ¹⁴⁵
Number of internally displaced persons	around 12,000 ¹⁴⁶
Population growth rate	2.6% ¹⁴⁷
Per capita GDP	US\$801 ¹⁴⁸
Percentage of the population living below the income poverty line (\$1.90/day)	55.5% ¹⁴⁹
Ranking in the 2019 Human Development Report	157 ¹⁵⁰
Official languages	Kinyarwanda, English, and French
Ethnic groups	Hutu, Tutsi, and Twa
Ranking on the Fragile States Index	35 out of 178 ¹⁵¹

145 National Statistics Institute of Rwanda. 2020. Size of the Resident Population (projection based on the 2012 Population and Housing Census). statistics.gov.rw/statistical-publications/subject/population-size-and-population-characteristics

146 World Bank. 2019. Internally Displaced Persons, New Displacement Associated with Disasters (Number of Cases) – Rwanda. data.worldbank.org/indicator/VC.IDP.NWDS?locations=RW

147 National Institute of Statistics of Rwanda. 2014. RPHC4 Thematic Report: Population Size, Structure and Distribution. statistics.gov.rw/publication/rphc4-thematic-report-population-size-structure-and-distribution

148 World Bank. 2019. GDP per Capita (Current US\$) – Rwanda. data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=RW

149 United Nations Development Programme. 2019. 2019 Human Development Report, p. 321, Table 1. hdr.undp.org/en/content/2019-human-development-index-ranking

150 Rwanda Human Development Indicators. hdr.undp.org/en/countries/profiles/RWA

151 Messner de Latour, J.J. et al. 2020. Fragile States Index Annual Report 2020. The Fund for Peace, p. 7.

Table 9. Historical overview.¹⁵²

Prior to colonial conquest	Is a centralized monarchy under a succession of Tutsi kings
1899	Becomes a German colony
1919	Indirect rule continues with Rwanda as a mandate territory [with Burundi] of the League of Nations, under Belgium ¹⁵³
1920s and 1930s	The Belgian government allows only Tutsi to serve as officials in Rwanda, while systematically removing Hutu from positions of power and excluding them from higher education, which could have led to future administrative posts.
1961	The Rwandan monarchy is dissolved. Grégoire Kayibanda is elected president of a Hutu-dominated government.
1962	Independence. ID cards play a role in continuing the conflict through discrimination against Tutsis. ¹⁵⁴
1973	Hutu leader General Juvénal Habyarimana seizes power. The regime continues the use of ID cards and uses population registration to record and control people's movements.
1989–1990	Apartheid measures and violence increase, with ethnic distinctions still enabled by ethnic labelling on ID cards. In 1990, the Rwandan Patriotic Front (RPF) invades from Uganda.
1991	A new Constitution is ratified, and a multiparty political system is reintroduced.
1993	Major General Habyarimana calls for power sharing in a new government that would involve the RPF. Extremist Hutus vehemently oppose this decision.
April 1994	The plane carrying Major General Habyarimana and Cyprien Ntaryamira, president of Burundi, is shot down over Kigali: 100 days of genocide follow, in which over 800,000 Tutsis are killed.
July 1994	The RPF takes control of Kigali. Millions of people (mostly Hutus) flee Rwanda and enter Congo (formerly Zaire) and other neighbouring countries. The RPF forms a Government of National Unity that brings together parties that had not participated in the genocide.
Aftermath of the genocide	The country tackles a legacy of crushing social and economic costs with strong state institutions and large public investments financed with the help of external partners; this results in remarkable economic growth. ¹⁵⁵
2000	Paul Kagame is elected president.
2018	Paul Kagame is re-elected for a third seven-year term as president.

¹⁵² Except where otherwise indicated, this section is based on Human Rights Watch. 1999. History. Leave None to Tell the Story: Genocide in Rwanda. hrw.org/reports/1999/rwanda/Geno1-3-09.htm; Outreach Programme on the 1994 Genocide Against the Tutsi in Rwanda and the United Nations. n.d. Rwanda: A Brief History of the Country. un.org/en/preventgenocide/rwanda/historical-background.shtml; Republic of Rwanda. n.d. History. gov.rw/about#section_History. Where dates differ between these sources, we have used the information provided by the Rwandan government.

¹⁵³ Republic of Rwanda. History.

¹⁵⁴ Human Rights Watch. Leave None to Tell the Story.

¹⁵⁵ World Bank. 2019. Rwanda Systematic Country Diagnostic, ix, pp. 3–4. documents1.worldbank.org/curated/en/219651563298568286/pdf/Rwanda-Systematic-Country-Diagnostic.pdf

Tutsis and Hutus

Before colonization, the term "Tutsi" denoted a member of the elite group of persons who were rich in cattle. This was contrasted with the word "Hutu" (originally referring to a subordinate or a follower of a more powerful person), used to describe the ordinary population who survived primarily through cultivation. Although the groups remained fluid, the gap between them widened because intermarriage was initially rare. The Twa were a much smaller group, initially forest-dwelling hunters and gatherers, with distinct physical characteristics and a distinctive dialect.

As explained by Human Rights Watch, the colonial powers favoured Tutsi on the basis of their belief that Tutsi, Hutu, and Twa were three distinct races, viewing the Tutsi as being the superior race due to the perception that they most resembled Europeans in looks and ability.

Under pressure from the United Nations, the colonial administration began to allow more Hutu participation in public life during the 1950s, but tensions between the groups continued to escalate. A violent incident in 1959 led to a Hutu uprising that continued over the next few years, with hundreds of Tutsi being killed while many others fled to neighbouring countries. This uprising marked the end of Tutsi domination at the same time as the end of Belgian colonial rule.

Legal framework¹⁵⁶ for establishing legal identity

Rwanda has a civil law system. Citizenship, civil registration, and identification are governed by organic laws, which in Article 95 of the Constitution are "those designated as such and empowered by this Constitution to regulate other key matters in the place of the Constitution."¹⁵⁷ Organic laws must be passed by a three-fifths majority vote of Parliament, in contrast to ordinary laws, which are passed by an absolute majority vote.¹⁵⁸ Table 10 lists the laws concerning legal identity and issuance of identity documents in Rwanda.

¹⁵⁶ The name IREMBO (which means gateway or door in Kinyarwanda) refers to an online portal for government services, functioning as a one-stop gateway to multiple government agencies. irembo.gov.rw

¹⁵⁷ Constitution of 2003 with amendments through 2015, Art. 95. The hierarchy of laws set out in Art. 95 is as follows: 1. Constitution; 2. organic law; 3. international treaties and agreements ratified by Rwanda; 4. ordinary law; 5. orders. Article 95 also states: "A law cannot contradict another law that is higher in hierarchy." constituteproject.org/constitution/Rwanda_2015.pdf?lang=en

¹⁵⁸ Ibid., Art. 91.

Table 10. Rwanda's legal framework for establishing legal identity.

Law	Approved or most current amendment	Comments
<i>Rwanda Constitution 2003</i>	As amended through 2015	
<i>Organic Law n°30/2008 relating to Rwandan Nationality</i>		Supplemented by Presidential Order n°21/01 of 2009 Establishing the Procedure for the Application and Acquisition of Rwandan Nationality
<i>Law n°32/2016 governing Persons and Family</i>	Law n°001/2020 of 2 February 2020	Supplemented by Ministerial Order n°001/07.01 of 2017 establishing modalities and procedures for change of name
<i>Law n°71/2018 relating to the Protection of the Child</i>		
<i>Law n°14/2008 governing Registration of the Population and Issuance of the National Identity Card</i>	Amended by Law n°44/2018	
<i>Law n°43/2011 establishing the National Identification Agency and determining its Mission, Organization and Functioning</i>		
<i>Law n°13 ter/2014 relating to refugees</i>		
<i>Law n°57/2018 on immigration and emigration in Rwanda</i>		Supplemented by Ministerial Order n°06/01 of 2019 relating to Immigration and Emigration

Constitution

The Rwandan Constitution opens by honouring the sacrifices of those who founded Rwanda and struggled “for security, justice, freedom, and the restoration of our national tranquility, dignity and pride.” It celebrates Rwanda’s common language, culture, and shared history and notes its consciousness “of the genocide committed against Tutsi that decimated more than a million sons and daughters of Rwanda.” It identifies “peace, security, unity and reconciliation” as the pillars of development and indicates its commitment to the rule of law, respect for human rights and freedom, and the principle of equality, including between men and women. It also commits to “consensual and pluralistic democracy founded on power sharing, national unity and reconciliation, good governance, development, social justice, tolerance and resolution of problems through dialogue” and to “preventing and punishing the crime of genocide, fighting genocide negationism, and revisionism, eradicating genocide ideology and all its manifestations, divisionism, and discrimination based on ethnicity, region, or any other ground.” The Constitution identifies values based on family, morality, and patriotism as key elements, along with a commitment to democracy.¹⁵⁹

¹⁵⁹ Ibid., Preamble.

Basis of citizenship in Rwanda

The right to nationality is one of the few rights identified by Article 136 of the Constitution as being non-derogable (absolute right) during a state of siege or a state of emergency.¹⁶⁰

Criteria for citizenship in Rwanda: There are five basic routes to Rwandan nationality:

- (1) Nationality by Rwandan descent;
- (2) Nationality by birth on Rwandan territory;
- (3) Nationality by marriage;
- (4) Nationality by adoption; and
- (5) Nationality by naturalization.

It is also possible to recover Rwandan nationality if it was revoked due to the acquisition of foreign nationality during the past period when Rwandan law did not allow dual nationality.¹⁶¹ Dual nationality is now explicitly permitted,¹⁶² and no person may be deprived of "Rwandan nationality of origin."¹⁶³ The rules on citizenship are entirely gender neutral.

The fact that parentage and place of birth are fundamental to many avenues for citizenship makes accurate birth registration particularly important. Marriage registration in Rwanda is also crucial to the acquisition of citizenship by marriage, regardless of where the marriage took place.

(1) Nationality by Rwandan descent: A person is a Rwandan citizen if either parent was a Rwandan citizen.¹⁶⁴ This is the only form of Rwandan citizenship that is automatic, without requiring application.¹⁶⁵ The Rwandan nationality of a parent can be demonstrated by a birth certificate or a Rwandan identity card or passport (or, in the absence of either of these, or in cases of doubt, by an investigation).¹⁶⁶

(2) Nationality based on birth on Rwandan territory: Rwanda's citizenship law has a strong *jus soli* element. Anyone born on Rwandan territory to non-Rwandan parents who are residing in Rwanda may acquire Rwandan nationality on application to the director-general of the Agency from age 18.¹⁶⁷

160 Ibid., Art. 136, which states in part (emphasis added): "A declaration of a state of siege or state of emergency cannot under any circumstances violate the right to life and physical integrity of the person, the rights accorded to people by law in relation to their status, capacity and **nationality**; the principle of non-retroactivity of criminal law, the right to defence and freedom of conscience and religion."

161 *Organic Law n°30/2008*, Art. 22.

162 Ibid., Art. 3. Dual nationality is supposed to be declared to the Directorate General (or the relevant embassy or consulate for a person living abroad) within 3 months from the date of acquisition of another nationality. Art. 37.

163 Ibid., Art. 19.

164 Ibid., Art. 6. Article 7 elaborates: "Parental descent shall be taken into consideration in matters of granting nationality only where it has been provided for by the laws in force in Rwanda. Conditions for determining whether a person is of Rwandan parental descent shall be provided for by Presidential Order."

165 All of the other forms of citizenship are listed under the heading of Acquired Rwandan Nationality in *Organic Law n°30/2008* of 25/07/2008 relating to Rwandan nationality.

166 Presidential Order n°21/01, Art. 10.

167 *Organic Law n°30/2008*, Art. 8. Age 18 is the age of majority for citizenship purposes. Ibid., Art. 4.

An application for nationality on this basis normally requires the following documents:

- ▶ Birth certificate;
- ▶ Certificate of identity;¹⁶⁸
- ▶ Certificate proving that the applicant has never been sentenced to more than six months in jail and is not involved in current legal proceedings;
- ▶ Passport (if he or she has one);
- ▶ Certificate of registration as a foreigner for any applicant who is resident in Rwanda; and
- ▶ Proof of birth in Rwanda to parents who were legally resident in Rwanda at the time.¹⁶⁹

This route to citizenship is applied in a manner aimed at preventing statelessness. A child born in Rwanda whose parents are unknown or are themselves stateless is Rwandan by birth, as is a child born in Rwanda who cannot acquire the nationality of one of his or her parents. A newborn found in Rwanda is considered to have been born in Rwanda in the absence of proof to the contrary.¹⁷⁰

(3) Nationality by marriage: Any foreigner or stateless person married to a Rwandan may acquire Rwandan nationality on application, after being married for 3 years, provided that he or she has continued living with his or her spouse until the date of the application. Marriages concluded abroad can be a basis for citizenship by marriage, but any marriage must be registered in a Rwandan registry of civil status to serve as a basis for citizenship.¹⁷¹ Customary marriages are not officially recognized for this or any other purpose in Rwanda.¹⁷²

Once Rwandan nationality by marriage has been acquired, dissolution of the marriage has no effect on Rwandan nationality acquired in good faith by the spouse or by the children born of the marriage.¹⁷³

¹⁶⁸ A document certifying that the applicant's parents were legally residing in Rwanda at the time of his/her birth. rwandahc.org/services/rwandan-nationality

¹⁶⁹ Presidential Order n°21/01, Art. 6.

¹⁷⁰ Ibid., Art. 9.

¹⁷¹ *Organic Law n°30/2008*, Arts 11, 38.

¹⁷² Article 17 of the Rwandan Constitution states (in part): "A civil monogamous marriage between a man and a woman is the only recognized marital union. However, a monogamous marriage between a man and a woman contracted outside Rwanda in accordance with the law of the country of celebration of that marriage is recognized."

¹⁷³ *Organic Law n°30/2008*, Art. 11.

The documents that must be provided in support of the application include these:

- ▶ Marriage certificate;
- ▶ Certificate proving that the applicant has never been sentenced to more than six months in jail and is not involved in current legal proceedings;
- ▶ Proof of shared marital life for the preceding 3 years in the form of a certificate from the registrar of civil status at the place of marriage or the place of the couple's residence; and
- ▶ Rwandan identity card "or any other justification of Rwandan nationality" for the Rwandan spouse.¹⁷⁴

(4) Nationality by adoption: Adoption by a Rwandan citizen leads automatically to Rwanda citizenship. This is the case for a minor child who has a foreign nationality or is stateless.¹⁷⁵ The requirements are the child's birth certificate and certificate of adoption, plus the identity card of the adopting parent.¹⁷⁶

(5) Nationality by naturalization: A foreigner who is at least 18 years old may apply for Rwandan nationality by naturalization after having been a legal resident of Rwanda for at least 5 years preceding the application. The applicant must also

- ▶ be the owner of sustainable activities in Rwanda;
- ▶ be of good behaviour and morals and not previously sentenced to imprisonment for more than six months;
- ▶ "respect Rwandan culture" and "be patriotic";
- ▶ not have been previously expelled from Rwanda;
- ▶ not be characterized by "genocide ideology"; and
- ▶ not be a burden to the State and to the people.¹⁷⁷

Applicants for citizenship by naturalization must submit a birth certificate, a passport, and a certificate of registration as a foreigner, among other documents.¹⁷⁸ The law previously required that an applicant for citizenship by naturalization must speak Kinyarwanda, but this criterion was replaced in 2008 by the requirement of respecting Rwandan culture and being patriotic.¹⁷⁹

A minor child born to naturalized parents is also Rwandan "if his/her birth is legally recognized in Rwanda."¹⁸⁰

¹⁷⁴ Presidential Order n°21/01, Art. 10.

¹⁷⁵ *Organic Law n°30/2008*, Art. 12.

¹⁷⁶ Presidential Order n°21/01, Art. 23.

¹⁷⁷ *Organic Law n°30/2008*, Art. 14.

¹⁷⁸ Presidential Order n°21/01, Art. 14.

¹⁷⁹ See Manby, B. 2016. *Citizenship Law in Africa: A Comparative Study*, p. 81. Open Society Foundations; Manby, B. 2015. *Citizenship and Statelessness in Africa: The Law and Politics of Belonging: A Comparative Study*, p. 154. Wolf Legal Publishers.

¹⁸⁰ *Organic Law n°30/2008*, Art. 17.

Protection and citizenship for refugees

Rwanda hosts about 150,000 refugees from over 60 countries, primarily from the Democratic Republic of the Congo (DRC) and Burundi.¹⁸¹ UNHCR rates Rwanda as having “one of the most generous asylum policies in the world.”¹⁸² According to UNHCR (2019):

Generally, Rwanda offers a favourable protection environment for refugees. There is de facto right to work, open borders, and access to durable solutions (resettlement, local integration and return) is unhindered. Access to core protection services such as registration, legal assistance, community-based protection, support to [sexual and gender-based violence] survivors and prevention, child protection, and support to persons with specific needs, including persons with disabilities, are the key protection priorities of the inter-agency response.¹⁸³

Citizenship by naturalization is open to refugees, but the requirement that applicants must be engaged in “sustainable activities in Rwanda” could be a barrier for many. Also, in practice, the naturalization of Congolese refugees who fled to Rwanda to escape violence is often blocked for political reasons or because of disagreements about their status.¹⁸⁴

In 2018, Rwanda introduced a locally issued, digitally readable passport for refugees who are not Rwandan citizens; it is aimed at allowing them free movement across the world like any citizen. These passports are valid for 5 years.¹⁸⁵

Civil registration in Rwanda

Before 1931, only vital events for nationals of the colonial powers were registered. From 1931 to 1961, while the country (then called Ruanda-Urundi) was still under Belgian colonial rule, all Rwandans over the age of 18 were issued an identity booklet (or *lbuku*). These booklets, written in both Dutch and Kinyarwanda, displayed individuals’ names, approximate date of birth,

181 See, for example, The Conversation. 2019. How Rwanda Can Do a Better Job of Supporting Refugees. 3 March. [theconversation.com/how-rwanda-can-do-a-better-job-of-supporting-refugees-112424#:~:text=Rwanda%20hosts%20about%20150%2C000%20refugees,%20and%20Burundi%20\(69%2C000\)](https://theconversation.com/how-rwanda-can-do-a-better-job-of-supporting-refugees-112424#:~:text=Rwanda%20hosts%20about%20150%2C000%20refugees,%20and%20Burundi%20(69%2C000))

182 UNHCR. n.d. Economic Inclusion of Refugees in Rwanda: A Joint Strategy by The Ministry of Disaster Management and Refugee Affairs and The United Nations High Commissioner for Refugees for Furthering Economic Development in Host Communities through Refugee Self-Reliance (2016-2020), p. 17. unhcr.org/rw/wp-content/uploads/sites/4/2017/02/Economic-Inclusion-of-Refugees-in-Rwanda-Final-Version.pdf

183 UNHCR. 2019. Rwanda Country Refugee Response Plan 2019-2020, p. 4. data2.unhcr.org/en/documents/details/69632

184 Manby, B. 2018. Statelessness and Citizenship in the East African Community. UNHCR, p. 57.

185 Niyonzima, O. 2018. Rwanda Launches Refugee Passport. KT Press, 11 October. “The features of the passport of refugees are the same as the citizen’s passport, except the mention on the cover page, that, it is issued to refugees. For a refugee to get a passport, they are required to present documents that testify that they are refugees. The document is delivered by camp representatives if the refugee is in a camp or by local leaders for refugees living in Rwandan community.” ktpress.rw/2018/10/rwanda-launches-refugee-passport. Previous refugee travel documents existed in Rwanda, but they were less practically useful and had shorter periods of validity.

parents' names, sex and marital status, height, names of descendants, profession, and ethnic or clan affiliation.¹⁸⁶ These cards were compulsory as of 1933 and further solidified the artificially imposed separation of the Hutu, Tutsi, and Twa populations.¹⁸⁷

In the years following Ruanda-Urundi's independence and its separation into the two individual states of Rwanda and Burundi, the civil registration process in Rwanda was governed by a 1961 order enacted during Belgium's rule. Other than a few amendments (including assigning civil registration-related responsibilities to Rwanda's Ministry of Internal Security), this order governed the civil registration process until October 1988.

Many records of civil registration in Rwanda were lost during the genocide and related conflicts during this period. It was not until 1998 that efforts to restart civil registration in the country resumed, through a focused strengthening of legal and institutional frameworks.

Today, the entity responsible for civil registration and civil identification is the National Identification Agency (NIDA), which falls under the Ministry of Local Government. Its mission includes the following tasks:

- ▶ To promote civil registration through implementing a modern and permanent system for population registration and identification toward national development;
- ▶ To implement laws and general regulations relating to population registration, civil registration, and issuance of the national identity card;
- ▶ To produce and issue the national identity card and other identification documents of the population, except for those issued by other organs by virtue of a specific law;
- ▶ To sensitize the population on the activities of population registration, civil registration, and issuance of the national identity card;
- ▶ To gather, approve, and keep identification data of the population;
- ▶ To build the capacity of local administrative entities and give them instructions relating to population registration, civil registration, and issuance of the national identity card and to monitor implementation by those institutions;
- ▶ To specify the format of documents pertaining to population registration, civil registration, and issuance of the national identity card;
- ▶ To advise the government on matters relating to population registration, civil registration, and issuance of the national identity card;
- ▶ To collaborate with other organs involved in population registration, civil registration, and issuance of the national identity card and to provide them with information where necessary;

186 National Institute of Statistics of Rwanda. n.d. Rwanda Civil Registration and Vital Statistics (CRVS) Systems. statistics.gov.rw/publication/rwanda-civil-registration-and-vital-statitics-crvs-systems

187 Sellström, T. and Wohlgemuth, L., and The Nordic Africa Institute. n.d. The International Response to Conflict and Genocide? Lessons from the Rwanda Experience. Study 1. Historical Perspective: Some Explanatory Factors. oecd.org/countries/rwanda/50189653.pdf

- To establish relations and collaborate with regional and international organizations of which Rwanda is a member and having a mission like that of NIDA; and
- To perform such other duties as may be assigned to it by competent organs.¹⁸⁸

The administrative structure of Rwanda is highly decentralized and is composed of four provinces and the City of Kigali, 30 districts, 416 sectors, 2,148 cells,¹⁸⁹ and 14,837 villages.¹⁹⁰ Different people head each of these subdivisions, with different roles and responsibilities for carrying out civil registration services.¹⁹¹

A country profile by the International Development Research Centre (IDRC)¹⁹² indicates that there are 3,186 civil registrars in Rwanda, distributed among the 2,148 cells that serve as local civil registration offices or service points: 416 are in urban areas and 1,732 are in rural areas. There are also "556 civil registration service points at health facilities for birth and death registration, 33 courts for the notification of events that take place in courts, and 33 embassies and high commissions for registering events that take place abroad."¹⁹³

The decentralization of registration services makes these accessible: the average distance of most households from the nearest local registration office is 1 to 5 km. The average time it would take most households to reach their nearest local registration office is estimated to be one to four hours on foot or less than an hour by car.¹⁹⁴

Table 11. Administrative governance structure.

Administrative unit	Number of units	Average number of people served	Average number of households served	Registration responsibilities
Provinces (<i>intara</i>)	5	2,000,000	400,000	
Districts (<i>akarare</i>)	30	360,000	72,000	
Sectors (<i>imirenge</i>)	416	26,000	5,200	
Cells (<i>utugari</i>)	2,148	5,000	1,000	Civil registration takes place at cell level by 2,148 registrars: 416 in urban areas and 1,732 in rural areas
Villages (<i>imidugudu</i>)	14,842	750	150	

Source: Adapted from ID4D Country Diagnostic: Rwanda, World Bank Group, 2016. documents1.worldbank.org/curated/en/257581546882856591/pdf/128624-REVISED-PUBLIC-Rwanda-ID4D-Diagnostic-01042019.pdf.

¹⁸⁸ Law n°43/2011, Art. 4.

¹⁸⁹ Cells are made up of villages within a certain geographic location in rural areas.

¹⁹⁰ Government of Rwanda. n.d. Administrative Structure. gov.rw/government/administrative-structure

¹⁹¹ Ibid.

¹⁹² Centre of Excellence for CRVS Systems. [2021 forthcoming]. Country Profile: Rwanda. International Development Research Centre. Ottawa, Ontario. crvssystems.ca/country-profiles

¹⁹³ Ibid.

¹⁹⁴ Ibid.

A civil status record is generally made in the presence of two witnesses who are at least 18 years old. The civil registrar reads the record to the concerned parties in the presence of the witnesses, and the civil registrar, the concerned parties, and the witnesses sign it. (A fingerprint is taken if any of them is unable to sign.)¹⁹⁵ The civil registrar must remind the concerned parties and the witnesses of the penalties for false declarations about legal status.¹⁹⁶ The witness requirement has been cited as a factor that contributes to lower registration rates;¹⁹⁷ the recent amendments have introduced some exceptions to this aspect of the procedure.

Civil status registers may be kept in paper or electronic form. The supervisor initials the hard copy civil register books, while the Minister electronically signs an electronic civil status register. The recent amendments specify that registration “in electronic civil status registers is permanent” and provides that civil status registers “are made available for consultation by any interested person.”¹⁹⁸

In 2018, the government launched its Civil Registration and Vital Statistics National Strategic Plan,¹⁹⁹ following a 2016 assessment. The objective was the universal registration of vital events and the production of timely vital statistics toward “legal identity for all, good governance and evidence-based decision making for sustainable development.” The strategy contains technically sound recommendations for civil registration with a long-term view, which the country appears to be following. However, no information on specific implementation plans or monitoring and evaluation of the strategy was available.

One noteworthy reform is a detailed new procedure for reconstructing or recording data that has gone missing or was never recorded, after appropriate enquiry and court intervention (with one court ruling possibly covering multiple records).²⁰⁰

Birth registration: Law n°32/2016, prior to its recent amendment, required that the birth of every child must be declared to a civil registrar within 30 days. The birth could be registered by the child’s father or mother or, if this was impossible, by a person they authorized, or by some other person exercising parental authority over the child. The final fallback was birth registration by any other person present at the child’s birth or by a close relative. The declaration of birth had to be accompanied by presentation of a medical birth certificate issued by the health facility where the child was born. If the child was not born in a health facility (which applies to fewer

¹⁹⁵ Law n°32/2016, Art. 63.

¹⁹⁶ Ibid., Arts 67–68.

¹⁹⁷ See, for instance, World Bank Group. 2016. ID4D Country Diagnostic: Rwanda, p. 13. documents1.worldbank.org/curated/en/257581546882856591/pdf/128624-REVISED-PUBLIC-Rwanda-ID4D-Diagnostic-01042019.pdf

¹⁹⁸ Law n°32/2016, Art. 77 as amended by Law no001/2020.

¹⁹⁹ National Institute of Statistics of Rwanda, Ministry of Local Government, Ministry of Health, Ministry of Justice, Ministry of Gender and Family Promotion. 2017. Civil Registration and Vital Statistics Systems of Rwanda National Strategic Plan 2017/18–2021/22. statistics.gov.rw/publication/crvs-national-strategic-plan

²⁰⁰ Law n°32/2016, Arts 90–91, as amended by Law no001/2020. The immediate supervisor of the civil registrar, acting on the basis of the enquiry results, petitions a competent court to restore data that once existed or to record data that never existed. The court can then order restoration or registration of data, with one judgement covering all records of an entire year for every civil registration office, if possible.

than 10 percent of births²⁰¹), the declaration was made "upon presentation of a birth certificate issued by a competent authority of the place of birth of the child indicating the names of the child's parents and date of birth" and in the presence of two witnesses who are at least 18 years old.²⁰²

The 2020 amendments changed the focus of birth registration to health facilities. The birth of every child born in a health facility must be declared immediately after birth at that facility, "upon presentation of a medical birth certificate issued by a medical professional." The declaration of the birth of a child born outside a health facility must be made within 30 days, by the same procedure as before. The amended law gives a slightly altered hierarchy of persons who are competent to declare a birth:

- ▶ The child's father or mother; or
- ▶ If both are unavailable, a person they have authorized or any person exercising parental authority over the child or a close relative; or
- ▶ In the absence of all such persons, any other person who was present at the child's birth.²⁰³

There is special provision for the birth registration of abandoned newborns.²⁰⁴

The consequences of late registration are that the birth will be registered in the National Population Registry at NIDA but not in the birth registry book. Parents are required to provide an affidavit containing the reason for the late registration in order for the child to be registered in the birth registry.²⁰⁵ Birth registration fell in Rwanda between 2005 and 2014–2015. The 2014–2015 Demographic and Health Survey (DHS) reported that 55.4 percent of births for children under 5 years had been recorded, with less than 3 percent of children under age 5 having birth certificates.²⁰⁶ Oddly, the preliminary data published from the 2019–2020 DHS do not report on the birth registration rate.²⁰⁷ However, the Rwanda Statistics Report 2019 reveals a "registration completion rate of 87% countrywide with an insignificant difference between male and female registration rate."²⁰⁸ Furthermore, 78 percent of the births were registered within the requisite

201 Republic of Rwanda. 2016. Rwanda Civil Registration and Vital Statistics Systems – Comprehensive Assessment Final Report: Volume I, p. 28. statistics.gov.rw/file/5059/download?token=4VFetbmn

202 Law no32/2016, Art. 100.

203 Ibid., Art. 100 as amended by Law no001/2020.

204 Ibid., Art. 102. The civil registrar of the place where the child was found will issue a provisional birth record indicating the newborn child's name and sex as well as the presumed place of birth and date of birth (based on a medical report or on the child's condition). The provisional birth record can be annulled at the request of any interested person if the child's birth record is located or on the basis of court findings.

205 IREMBO. n.d. Child Registration. rol.rw/rolportal/en/web/nida/idreg

206 National Institute of Statistics of Rwanda, Rwanda Ministry of Finance and Economic Planning, Rwanda Ministry of Health, and ICF International. 2016. Rwanda Demographic and Health Survey 2014–15, Final Report, p. 27. dhsprogram.com/pubs/pdf/FR316/FR316.pdf

207 National Institute of Statistics of Rwanda, Rwanda Ministry of Health, and ICF International. 2020. Rwanda Demographic and Health Survey 2019/20 Key Indicators Report. dhsprogram.com/publications/publication-PR124-Preliminary-Reports-Key-Indicators-Reports.cfm

208 National Institute of Statistics of Rwanda. 2019. Rwanda Vital Statistics Report 2019, xiv. statistics.gov.rw/publication/rwanda-vital-statistics-report-2019

30-day timeframe.²⁰⁹ While registration is free, the registrars charge for the birth certificate, which is a deterrent for many parents. This means that while parents may register the birth of a child, they will not necessarily go back to the registrar to pick up the birth certificate (as reflected in the gap between registration rates and possession of a birth certificate).

Death registration: Law n°32/2016 originally placed entire responsibility for a declaration of death on the relatives or spouse of the deceased, or any other person with sufficient information on the civil status of the deceased. The law initially required a declaration of death with 30 days of its occurrence, accompanied by a medical certificate of death or a death record issued by the competent authority. The declaration also had to be made in the presence of two witnesses who were at least 18 years of age.²¹⁰

Amendments passed in 2020 shifted the primary responsibility of the notification of the death to health facilities (where possible). If a certificate of death issued by a medical professional from a health facility is presented, no witnesses are required for the declaration of death. If the death did not take place in a health facility, then the previous procedure, including the witness requirement, continues to apply.²¹¹

Health facilities are required to record all deaths that take place in that facility in a register of deaths that the facility maintains. The local civil registrar, or any interested administrative or judicial authority, can demand to examine a health facility's register of deaths.²¹² This provides an opportunity to cross-check information.

Timely death registration may have been given added impetus by a recent amendment that eliminated the requirement that a widow must wait 300 days from the death of her husband before remarrying; widowed spouses of either sex can now remarry at any time after the death of a spouse.²¹³

Death registration lags behind birth registration, with the National Institute of Statistics of Rwanda estimating that only 31.4 percent of all deaths were registered in 2019.²¹⁴

Marriage and divorce registration: Marriage and divorce are also part of the civil register. In 2019, the National Institute of Statistics of Rwanda assumed 100 percent completeness in marriage records in the civil register, since all marriages must be officiated by a civil registrar.²¹⁵ However, divorces are concluded by court order: it is estimated that the divorce registration rate for 2019 was only 3.6 percent.²¹⁶

209 Ibid.

210 Law n°32/2016, Arts 106–107.

211 Ibid., Art. 106 as amended by Law no001/2020.

212 Ibid., Art. 109.

213 Ibid., Art. 215 as amended by Law no001/2020.

214 National Institute of Statistics of Rwanda. Rwanda Vital Statistics Report 2019, p. xvi.

215 Ibid.

216 Ibid.

National Population Register and identity credentials

The National Population Register provides for different registers for four categories of people: citizens, foreigners, children with unknown parents, and adopted children.²¹⁷ Different types of identity cards are issued to different categories of persons.

National identity cards are obligatory for Rwandan nationals starting at age 16. People must be issued a national identity card within six months after reaching age 16, and the law requires everyone with a national identity card to carry it. Citizens also have a legal duty to replace an identity card that has been lost or damaged. Failure to comply can lead to an administrative fine.²¹⁸

A foreigner who is authorized to reside in Rwanda either temporarily or permanently has a legal obligation to register with the nearest office of the Directorate General of Immigration and Emigration.²¹⁹ A foreigner whose residence permit has been approved is issued a resident identity card in one of three categories: (1) ordinary card, (2) diplomatic card, or (3) technical assistant card.²²⁰ Competent authorities can ask any foreigner at any time to produce proof of stay or an identification document.²²¹

Any person who is granted refugee status is issued a refugee identity card. Refugee identity cards are also issued to the refugee's spouse, children under the age of 18, and any dependents.²²²

The law does not address links between civil registration and population registration, but IREMBO indicates that registration is a prerequisite to obtaining an ID card.²²³

The law does not mention the capturing and recording of biometric data, but this is a requirement in practice.²²⁴ Furthermore, although not discussed in the legal enactments on the national identity card, secondary sources state that the government maintains a "Register of the

²¹⁷ Law n°14/2008, Art. 2.

²¹⁸ Ibid., Arts 10–11 and Art. 12 as amended by Law no44/2018.

²¹⁹ Law n°57/2018, Art. 32.

²²⁰ Ministerial Order n°06/01, Art. 23.

²²¹ Law n°57/2018, Art. 32; Rwanda Directorate General of Immigration and Emigration. n.d. Foreigners Identity Card. migration.gov.rw/our-services/foreigners-identity-card; Rwanda Directorate General of Immigration and Emigration. n.d. What to do soon after arrival. [migration.gov.rw/useful-links/information-for-migrants/on-arrival/#:~:text=All%20foreigners%20temporarily%20\(one%20year,who%20requests%20to%20see%20them](https://migration.gov.rw/useful-links/information-for-migrants/on-arrival/#:~:text=All%20foreigners%20temporarily%20(one%20year,who%20requests%20to%20see%20them). The website calls this card a Foreigner's Identity Card, and states that it is also known in Rwanda as a Green Card. However, the term Foreigner's Identity Card appears to be outdated. See Ministerial Order no02/01 of 31/05/2011 establishing Regulations and Procedures Implementing Immigration and Emigration Law, Art. 7, which was repealed by Ministerial Order no06/01 of 29/05/2019 relating to Immigration and Emigration.

²²² Law n°13 ter/2014, Art. 8.

²²³ IREMBO. n.d. Application for National ID. rol.rw/rolportal/en/web/nida/application-for-national-id

²²⁴ Ibid.: "You shall be required to visit a sector office to provide biometric data, before you can receive a National ID."

National Identity Card (NID)" that contains the identities of every individual who has received a national ID card.²²⁵

A mass registration process in 2007 aimed to provide a new population register and issue identity cards to all residents of Rwanda over age 16. According to NIDA, 9.2 million people were registered with biometric details in one weekend and processed within 45 days. While it was relatively easy to register as a citizen during this drive, it has been reported that subsequent registration by persons over age 16 has become more difficult, as they must provide reasons for failing to register in the initial process. It has also been noted that the recovery of Rwandan nationality is more tightly controlled now than it was in the immediate aftermath of the genocide, when so many Rwandans were displaced.²²⁶

Data protection

Rwanda has a general access to information law.²²⁷ A general data protection law was expected to be enacted during 2020, but was not yet in place as of January 2021. There are rules about access to specific information in some of the laws on civil registration.

The access to information law generally requires public organs and private bodies to disclose information where the public interest in disclosure outweighs the privacy interest or other specified justifications for non-disclosure (which include national security and the enforcement of law and justice).²²⁸ This law generally requires the correction of personal information at the request of the person concerned or his or her authorized representative, where the personal information held by a public or private body is "inaccurate, incomplete, or irrelevant."²²⁹ With respect to access to personal information by other persons, this law provides no detail aside from the principle that information need not be disclosed if it would "involve interference in the privacy of an individual when it is not of public interest."²³⁰

Law n°32/2016, which governs civil registration, has specific rules concerning copies or extracts of birth records. Everyone has the right to be given a copy or extract of his or her own birth record. The following people may also be issued this information: direct ascendants or descendants of the person in question, his or her spouse, his or her guardian, or his or her legal representative. No other person may be issued a copy or extract of a birth record without the permission of the person to whom it relates or the permission of a competent court if that person is deceased. If a request to a civil registrar for a copy or extract from a birth record is

225 See, for instance, Atick, J.J. 2016. The Identity Ecosystem of Rwanda: A Case Study of a Performant ID System in an African Development Context, p. 6. ID4Africa.

id4africa.com/2016/files/ID4Africa2016_The_Identity_Ecosystem_of_Rwanda_eBooklet.pdf

226 Manby, B. 2018. Statelessness and Citizenship in the East African Community, p. 56, citing a National Identification Agency presentation at an ID4Africa conference site visit, 25 May 2016; and Atick, J.J. The Identity Ecosystem of Rwanda, p. 18, for the figures given for the mass registration drive.

227 Law no04/2013 of 08/02/2013 relating to access to information.

228 Ibid., Art. 4.

229 Ibid., Art. 12.

230 Ibid.

denied, the applicant may refer the matter to the civil registrar's immediate supervisor. If the response is still unsatisfactory, he or she may petition a competent court, which decides the case in terms of a summary procedure.²³¹

2020: Reacting to the COVID-19 pandemic

A law on disaster prevention and response, Law n°41/2015 of 29/08/2015, relates to disaster management, supplemented by Ministerial Order n°01/MIDIMAR/18 of 21/06/2018, relating to assisting actors and volunteers in case of disaster response.

Rwanda also has a National Disaster Management Policy, revised in 2012. It considers the possibility of a wide range of disasters, such as floods, landslides and mudslides, volcanic activity, drought, food insecurity/famines, earthquake, fires, epidemics, terrorism, industrial and technological hazards, and mass movement of the population, but it does not mention civil registration or identification issues.

The UN Statistics Division reported in April 2020²³² that "Civil Registration is considered as an essential service" in Rwanda and that registration of vital events services continued during the pandemic.

Chapter summary

Rwanda's post-genocide era has been marked by strong political leadership and coordinated efforts toward improving registration of civil events. Civil registration and civil identification are centralized within the same ministry; one of the most visible efforts to ensure easy access to registration offices throughout the country is the administrative decentralization of event registration.

It is noteworthy that the routes to Rwandan citizenship include some special dispensations to combat statelessness. Citizenship by naturalization is available in theory to refugees; Rwanda is recognized for having one of the most generous asylum policies in the world, although problems still undermine practical application of the route to citizenship for certain groups of refugees.

Faced with a falling rate of birth registration, Rwanda has made efforts to encourage birth registration through both law reforms and public awareness campaigns. These appear to be bearing fruit. Furthermore, as in Afghanistan and Georgia, the focus of birth registration in Rwanda is moving to health facilities, with about 90 percent of children in Rwanda being born in such a facility.

Previously, two witnesses were required to register any civil event. The recent introduction of exceptions to this requirement is aimed at increasing civil registration rates.

231 Law n°32/2016 of 28/08/2016, Art. 105 as amended by Law no001/2020. "Any person who wishes to be issued with a birth record but whose birth was not declared within the period provided for by this Law, his or her birth must be first recorded in civil status registers in accordance with the provisions of the Order provided for under Article 100 of this Law."

232 UN Legal Identity Agenda. 2020. Impact of COVID-19. unstats.un.org/legal-identity-agenda/COVID-19. See section on Rwanda.

The civil registration law provides a detailed procedure for reconstructing or recording data that has gone missing or was never recorded. This is particularly appropriate in a post-conflict situation.

Different identity credentials are issued to Rwandan nationals, resident foreign nationals, and refugees. National ID cards are mandatory for citizens from age 16. Against the background of Rwanda's painful history of ethnic conflict — which was enabled by identification cards that indicated ethnicity — the current identification cards have no such category. National ID cards indicate only name, date of birth, sex, and place of issue alongside a signature, a photograph, and a 16-digit identification number.

As in Afghanistan and Georgia, descent is the primary basis for Rwandan citizenship. This is the only form of citizenship that is conferred automatically, without an application process, which makes civil registration records crucial.

Rwanda does not yet have a general data protection law, but access to information from birth records is narrowly restricted by provisions in the law on civil registration. These provisions appear to continue to apply, even though a general law on access to information has been introduced.

The Fragile States Index considers Rwanda to be a nation at risk. This means that future political developments could impact the country's progress in the area of civil registration and identity management.

South Africa



Background and context

South Africa's majority population consists of people who classify themselves as Black or Indigenous South Africans, but they are not culturally or linguistically homogeneous. South Africa has a vibrant and active civil society and a respected independent judiciary.²³³ However, poverty, inequality, and unemployment remain intractable challenges, with disparities still dividing on racial lines for the most part. The World Bank described South Africa as having “one of the highest inequality rates in the world,” a problem that has persisted and grown over time.²³⁴

²³³ See, for instance, Freedom House. 2020. South Africa: Civil Liberties.
freedomhouse.org/country/south-africa/freedom-world/2020

²³⁴ World Bank. 2019. The World Bank in South Africa: Overview.
worldbank.org/en/country/southafrica/overview

Table 12. South Africa at a glance.

Population	59.62 million ²³⁵
Number of internally displaced persons in the country in 2019	350 ²³⁶
Population growth rate	1.4%
GDP per capita	US\$6,001 ²³⁷
Poverty index	55% ²³⁸
Ranking on the Human Development Index	114 ²³⁹
Major ethnic groups	Zulu, Xhosa, Bapedi (North Sotho), Tswana, South Ndebele, Basotho (South Sotho), Venda, Tsonga, and Swazi, ²⁴⁰ in addition to White and Coloured
Official languages	Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa, and isiZulu ²⁴¹
Ranking in the 2020 Fragile States Index ²⁴²	70.1 (elevated warning)

235 Statistics South Africa. 2020. 2020 Mid-year population estimates.

statssa.gov.za/?p=13453&gclid=EAlalQobChMI-brpocz7QIVA7GGCh3tJwrcEAAAYASAAEgKQhVD_BwE

236 Internal Displacement Monitoring Centre. n.d. South Africa. 1 January–31 December 2019 data.

internal-displacement.org/countries/south-africa

237 World Bank. 2019. GDP per Capita (Current US\$) – South Africa.

data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=ZA

238 World Bank. 2020. Poverty & Equity Brief: South Africa. databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global_POVEQ_ZAF.pdf

239 United Nations Development Programme. 2020. South Africa Human Development Indicators.

hdr.undp.org/en/countries/profiles/ZAF

240 New World Encyclopedia. n.d. South Africa.

newworldencyclopedia.org/entry/South_Africa#Demographics

241 *Constitution of the Republic of South Africa*. 1996. Chapter 1, Art. 6(1).

[gov.za/documents/constitution/chapter-1-founding-provisions#5](https://www.gov.za/documents/constitution/chapter-1-founding-provisions#5)

242 Messner de Latour, J.J. et al. Fragile States Index Annual Report 2020, p. 11.

Table 13. Historical overview.

1910	The Union of South Africa comes into being as a member of the British Empire — a federation ruled by a white minority, with English and Dutch as the official languages. ²⁴³ The British Parliament passes the <i>South Africa Act</i> , creating an institutionalized system of exclusion and marginalization of the original population ("natives, colored and mixed races") and Asiatic residents (mostly of Indian origin). ²⁴⁴
1912	The African National Congress (ANC) is founded to protest the policies of racial discrimination. ²⁴⁵
1948	The National Party gains power. Racial segregation is further strengthened. The African population is divided into ethnic "homelands," the idea being that these would become independent entities that would be the only source of citizenship for the Black population. Forced removals from "white" areas affect some 3.5 million people.
1961	South Africa becomes a republic with its own constitution, following a referendum on this issue in 1960. The ANC launches its armed struggle against the government after non-violent resistance in the 1950s fails to lead to political change.
1963	Top ANC leaders inside the country, including Nelson Mandela, are arrested, convicted of sabotage, and sentenced to life imprisonment.
1976	Mass resistance inside the country intensifies after unarmed students in Soweto protest apartheid education; they are met with police gunfire.
1980s	Some limited reforms are instituted.
1990	The ANC is officially unbanned; Nelson Mandela is released after 27 years in prison.
1993	An interim constitution is agreed to in multi-party talks. The Nobel Peace Prize is awarded jointly to Nelson Mandela and President F. W. de Klerk.
1994	Apartheid ends. The first democratic election is held, with Nelson Mandela becoming the first president of the new South Africa. Following the elections, South Africa is divided into nine new provinces, replacing the previous four provinces and ten ethnically-based Black homelands.
1995	The Truth and Reconciliation Commission is created.
1996	Parliament adopts the current constitution.

243 Afrikaans was recognized as an official language only in 1925. South African History Online. 2016. Constructing the Union of South Africa; Negotiations & Contestations, 1902–10.

sahistory.org.za/article/constructing-union-south-africa-negotiations-contestations-1902-10

244 Ibid.

245 Except where otherwise indicated, the brief historical account draws particularly on the South African Government's History in the Official Guide to South Africa 2018/19. n.d. gov.za/about-sa/history; and BBC News. 2018. South Africa Profile – Timeline, 4 April. bbc.com/news/world-africa-14094918

Legal framework for establishing legal identity

South Africa's legal system is a hybrid of Roman Dutch civil law, English common law, customary law, and religious personal law.²⁴⁶ Table 14 lists the laws governing the establishment of legal identity in South Africa.

Table 14. Legal framework for establishing legal identity.

Law	Date of approval or most recent amendment	Comments
<i>Constitution of 1996</i>	2013	
<i>Births and Deaths Registration Act 51 of 1992</i>	2010 (effective 1 March 2014)	Regulations on the Registration of Births and Deaths, 2014
<i>South African Citizenship Act 88 of 1995</i>	2010 (effective 1 January 2013)	Regulations on the South African Citizenship Act, 1995 issued in 2012
<i>Identification Act 68 of 1997</i>	2000 (effective 13 October 2000)	Identification Regulations, 1998
<i>Refugees Act 130 of 1998</i>	2017 (effective 1 January 2020)	Refugees Regulations, 2018
<i>Protection of Personal Information Act 4 of 2013</i>	came into force in part on 11 April 2014 and in part on 1 July 2020; remaining two provisions relating to amendments to other laws come into force on 30 June 2021	
<i>Promotion of Access to Information Act 2 of 2000</i>	came into force mostly on 9 March 2001, remaining provisions on 15 February 2002; last amended 2002	
<i>State of Emergency Act 64 of 1997</i>	1997	
<i>Disaster Management Act 57 of 2002</i>	2015 (effective 1 May 2016)	

Constitution

The South African Constitution, in its preamble, opens with an acknowledgement of the injustices of the past. It describes the nation as a unitary, sovereign, democratic state founded on the following key values:

- ▶ Human dignity, the achievement of equality and the advancement of human rights and freedoms;
- ▶ Non-racialism and non-sexism;

²⁴⁶ University of Melbourne. 2021. South African Legal Research Guide: The South African Legal System. unimelb.libguides.com/c.php?g=929734&p=6718215

- Supremacy of the Constitution and the rule of law; and
- Universal adult suffrage, a national common voter roll, regular elections, and a multi-party system of democratic government to ensure accountability, responsiveness, and openness (s. 1).

The Constitution includes a progressive Bill of Rights that explicitly prohibits both State and private discrimination on a broad range of grounds: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth (s. 9). The Constitution also guarantees that no citizen may be deprived of citizenship (s. 20), while leaving the details regarding the basis for citizenship to subsidiary legislation.

While the Constitution does not specifically refer to South Africa as a secular state, it prohibits unfair discrimination on the basis of religion (s. 9), guarantees “freedom of conscience, religion, thought, belief and opinion” (s. 15(1)), and provides that religious observances may be conducted at state or state-aided institutions as long as this takes place “on an equitable basis,” with attendance being free and voluntary (s. 15(1)).

The Constitution also protects the rights of cultural, religious, and linguistic communities to participate in associations formed on that basis and to exercise their culture, religion, and language in practice as long as this does not infringe the rights of others (s. 31).

Basis of citizenship in South Africa

The South African Constitution states that “every child has the right to a name and a nationality from birth”²⁴⁷ and includes birth as one of the prohibited grounds for discrimination.²⁴⁸ The Constitution makes it clear that there is one “common South African citizenship,” with all citizens being “equally entitled to the rights, privileges and benefits of citizenship” and “equally subject to the duties and responsibilities of citizenship” (s. 3).

The substantive and procedural requirements for South African citizenship have been amended many times since the advent of democratic governance in 1994. The current citizenship legislation provides for three categories of citizenship: based on birth (which covers both *jus soli* and *jus sanguinis*), descent (in respect of adopted children), and naturalization.²⁴⁹

(1) Citizenship by birth can be acquired in three ways: (a) being born inside or outside South Africa to a parent (mother or father) who is a South African citizen at the time of the birth; (b) being born in South Africa to any parent, if the birth is registered in South Africa and if person concerned does not have the citizenship or nationality of any other country (or the right to such citizenship or nationality); or (c) being born in South Africa to a parent who has permanent

247 Constitution of the Republic of South Africa 1996 (as amended through 2013), s. 28(1)(a).
gov.za/documents/constitution-republic-south-africa-1996

248 Ibid., s. 9(3): “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

249 The key law is the *South African Citizenship Act 88 of 1995* (as amended), supplemented by Regulations on the South African Citizenship Act, 1995, issued in 2012.

residence status, if the birth is registered in South Africa and the person concerned lives in South Africa from the date of birth to the date of becoming a major.²⁵⁰

(2) Citizenship by descent covers only the situation of a person who is adopted in terms of the South African law on adoption, provided that the birth is appropriately registered.²⁵¹

(3) Citizenship by naturalization²⁵² can be applied for by a non-citizen who (a) has permanent resident status (a process that takes at least 5 years for most people²⁵³) and who has lived in South Africa for another 5 years; (b) is a spouse or surviving spouse of a South African citizen who has permanent resident status and is ordinarily resident in the Republic during the subsistence of the marriage for a prescribed period, which is currently 10 years;²⁵⁴ or (c) was born in South Africa to parents who are neither South African citizens nor permanent residents, whose birth was registered in South Africa and who has lived in South Africa from birth to the date of becoming a major.²⁵⁵

The latter provision would seem to provide some help to persons who would otherwise be stateless, but in practice, citizenship in such circumstances has proved difficult to access.²⁵⁶

There is no distinction in South African law between males and females, or between married and unmarried persons, for the purposes of citizenship.²⁵⁷ South Africa does not prohibit dual citizenship, but it requires persons applying for citizenship by naturalization to demonstrate that they are either a citizen of a country that also allows dual citizenship or (if this is not the case) that they have renounced the citizenship of any such country.²⁵⁸

250 *South African Citizenship Act 88 of 1995*, s. 2.

251 *Ibid.*, s. 3.

252 *Ibid.*, ss 4–5.

253 *Immigration Act 13 of 2002*, ss 26–27; Department of Home Affairs. 2020. Permanent Residence Permit Information. dha.gov.za/index.php/immigration-services/test-prp. There are a few exceptions, such as for persons with critical skills, retired persons, financially independent persons, and refugees.

254 Regulations on the South African Citizenship Act, 1995, regulation 5(1). Marriage includes civil marriages between persons of the opposite or same sexes, as well as customary marriages (South African Citizenship Act 88 of 1995, s. 1, definition of marriage).

255 See *Jose and Another v Minister of Home Affairs and Others* 2019 (4) SA 597 (GP). The Department of Home Affairs argued that several applicants for citizenship by naturalization on this basis, all children of Angolan refugees, were ineligible for citizenship because they were not entered in the population register and did not have identity numbers. The Court held that registration of the birth involves notification of the birth followed by the issue of a birth certificate and does not require the entering of particulars into the population register or the issue of an identity number. See also *Minister of Home Affairs and Another v Ali and Others* 2019 (2) SA 396 (SCA).

256 See, for instance, *Mulwayi v Minister of Home Affairs* [2019] ZACC 1. saflii.org/za/cases/ZACC/2019/1.html. In the case of *Minister of Home Affairs & Others v DGLR & Another*, Supreme Court of Appeal, Case No 1051/2015, 6 September 2016, a court order that a child who fell into this category should be recognized as a South African citizen was ignored. UNHCR. 2020. Citizenship and Statelessness in the Member States of the Southern African Development Community, p. 24. refworld.org/docid/6012a0d44.html

257 *South African Citizenship Act 88 of 1995*, s. 14.

258 *Ibid.*, s. 5(1)(h).

The law explicitly states that the Minister may issue a certificate of citizenship to any person whose South African citizenship is in doubt²⁵⁹ — presumably to help prevent statelessness.

The law makes birth registration in South Africa a prerequisite to many forms of citizenship, meaning that a well-functioning civil registration system is vital to the assertion of citizenship rights.

The nationality of a child's parents is noted in the Department of Home Affairs records. A birth certificate does not indicate the citizenship of the person whose birth is registered, but identity numbers in different formats are provided on the birth certificate for children born to South African citizens, children born to permanent residents, and children born to refugees. No identity number is issued for the registration of other births that take place in South Africa.

South Africa's law allows for a transfer of status from refugee to permanent resident to naturalized citizen, albeit by a very slow road. In terms of the *Refugees Act 130 of 1998*, a refugee is eligible to apply for permanent residence after 10 years of continuous residence in South Africa from the date of asylum if the government's Standing Committee on Refugee Affairs — after considering all relevant factors, including efforts toward securing peace and stability in the refugee's country of origin — certifies that the person in question "would remain a refugee indefinitely."²⁶⁰ After acquiring permanent residence status, that refugee is then eligible to apply for citizenship by naturalization.²⁶¹ This route is reportedly problematic to follow in practice.²⁶² However, Manby reports that in the period shortly after 1994, the new government "granted a series of amnesties to several categories of migrants and refugees, recognising the role of the Apartheid regime in driving long-distance labour migration and stoking conflict in the region."²⁶³

Evidence of the difficulties encountered in implementing the citizenship law is the recent statement of the acting director-general of the Department of Home Affairs that the Department is embroiled in between 8,000 and 10,000 cases in courts all over the country, with some 150 new cases being opened each week.²⁶⁴ It has also been observed that, while several thousand persons used to be granted citizenship by naturalization annually, through an administrative process, naturalization is now viewed as being "exceptional" and is granted only by the Minister, which has drastically reduced the number of persons who become naturalized citizens each year.²⁶⁵

²⁵⁹ Ibid., s.15(1).

²⁶⁰ *Refugees Act 130 of 1998*, s. 27(c).

²⁶¹ *Immigration Act 13 of 2002*, s. 27(d).

²⁶² Manby, B. 2016. *Citizenship Law in Africa: A Comparative Study*, p. 132. Open Society Foundations.

²⁶³ UNHCR. *Citizenship and Statelessness in the Member States of the Southern African Development Community*, p. 13.

²⁶⁴ Para. 6.2(v) of answering affidavit in *Chisuse and Others v Director-General, Department of Home Affairs and Another*. collections.concourt.org.za/bitstream/handle/20.500.12144/36628/04Answering%20Affidavit.pdf?sequence=8&isAllowed=y. See also Ellis, E. 2020. Citizenship case reveals chaos at Home Affairs as it battles 8,000 lawsuits. Daily Maverick, 14 February. dailymaverick.co.za/article/2020-02-14-citizenship-case-reveals-chaos-at-home-affairs-as-it-battles-8000-lawsuits/#gsc.tab=0

²⁶⁵ UNHCR. *Citizenship and Statelessness in the Member States of the Southern African Development Community*, p. 5.

The South African Constitutional Court has held that discrimination on the basis of citizenship can be unconstitutional in some circumstances, even though citizenship is not listed as one of the prohibited grounds for discrimination in the Constitution's equality clause.²⁶⁶

Civil registration and identity cards in the past

During the apartheid era, birth registration and identification documents were used as instruments of racial classification and control. The *Population Act n°30 of 1950* mandated the registration of individuals from birth as belonging to one of four racial groups: White, Coloured, Bantu (Black African), or Other. Citizens were registered in a centralized system and were issued an identity card on which their race was indicated by their identity number. The attributes used to determine a person's race included skin colour, facial features, characteristics of the hair, home language and knowledge of Afrikaans, place of residence, friends, eating and drinking habits, employment, and socioeconomic status. Thus, South Africa's centralized population register was born primarily out of a desire to construct a legal hierarchy on the basis of race and was essential to the establishment of the apartheid state.²⁶⁷

Furthermore, Black South Africans were required to carry a passbook (known as a *dompas*, which literally means "dumb pass"). These documents were used to control movement, as they contained permissions for the holder to live and work only in specified areas of the country. The passbook also contained an individual's fingerprints, photograph, employment details, and race classification. Failure to produce a pass was grounds for arrest and expulsion to a Black "homeland" or reserve; such arrests were common in practice. These hated passes became a symbol of apartheid control and inspired public protest. In 1956, thousands of women famously marched to South Africa's central government building to protest the passes, and refusal to carry the passes became the heart of a civil disobedience action spearheaded by the African National Congress. The protests resulted in the Sharpeville Massacre on 31 March 1960, when 69 Black South Africans were shot dead by police during such a protest; today this event is commemorated as Human Rights Day in South Africa. The law requiring Black South Africans to carry passes was repealed only in 1986, in response to growing international pressure.²⁶⁸

In 1970, the Department of the Interior relaunched the population register in an attempt to capture and document every vital event of a person's life in one location, including birth, death, and marriage registrations, as well as licenses for driving, firearms, etc. This Book of Life, as it came to be known, was intended to replace the previous version of identity cards. It featured 50 pages to record information and was intended to be maintained and updated continuously. However, the Department of Interior misjudged the capabilities of the automated technology

266 *Larbi-Odam and Others v Member of the Executive Council for Education (North-West Province) and Another* 1998 (1) SA 745 (CC). saflii.org/za/cases/ZACC/1997/16.html; *Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development* 2004 (6) SA 505 (CC). saflii.org/za/cases/ZACC/2004/11.html. See Klaaren, J. 2010. Constitutional Citizenship in South Africa. *International Journal of Constitutional Law*, 8:1, pp. 94–110.

267 Breckenridge, K. 2014. The Book of Life: The South African Population Register and the Invention of Racial Descent, 1950–1980. WISER, University of the Witwatersrand. wiser.wits.ac.za/sites/default/files/Breckenridge%20-%20202014%20-%20The%20Book%20of%20Life%20The%20South%20African%20Population%20Reg_o.pdf

268 See, for instance, South African Government Printing Works. 2013. The New South African ID: From 'Dumb Pass' to Smart Card. 11 December. gpwonline.co.za/about-us/Pages/default.aspx

it intended to use to streamline the issuance process; as a result, many people waited years to receive their booklet. Six years into the project, over 7 million people (more than 50 percent of the target population) had still not received their new ID book.²⁶⁹

In 1986, South Africa transitioned from a race-based to a full population register. Prior to this date, the ID number's last two digits were the individual's racial classification. This racial labelling was abandoned in 1986, and the government began to issue IDs energetically from that point onward. In a way, this was the beginning of the end of apartheid.

The new democratic government that came into power in 1994 had to deal with civil registration records from a patchwork of actors, with different registries and documents for the White, Indian, Coloured, and African populations. The departments that had carried out civil registration according to race had to be merged and unified into a single population register. This fragmented background has meant that the Department of Home Affairs has had to deal with legacy registers that have included multiple and/or ambiguous records for people. The deduplication process has taken decades.²⁷⁰

Civil registration in South Africa today

All births and deaths that take place in South Africa must be registered at the Department of Home Affairs (DHA) within 30 days of occurrence. The information is entered into the National Population Register (NPR). The NPR is by law administered by the Minister of Home Affairs and the director-general, Home Affairs, who is the administrative head of the Ministry and ranks just below the Minister and Deputy Minister.

The key law is the *Births and Deaths Registration Act 51 of 1992*, supplemented by Regulations on the Registration of Births and Deaths, 2014.

The duty to provide the notice of birth falls on one or both parents or, if they are both deceased, on the next of kin or the child's legal guardian. There is no fee for birth registration if it takes place within the 30-day time limit.²⁷¹

The notice of birth must include proof that a birth has taken place, attested to by a medical practitioner who either attended the birth or examined the mother or the child after the birth. If the birth took place outside a health facility, the notice of birth must include an affidavit attested to by a South African citizen who witnessed the birth of the child.²⁷² The parent or parents (or other person who is registering the birth) must also provide certified copies of their identity document or (if a non-South African) a passport and the relevant visa or permit.²⁷³

269 Breckenridge, K. 2014. *The Book of Life: The South African Population Register and the Invention of Racial Descent, 1950–1980*.

270 World Bank Group and International Bank for Reconstruction and Development. 2019. *South Africa: ID Case Study*, p. 8. documents.worldbank.org/en/publication/documents-reports/documentdetail/315081558706143827/south-africa-id-case-study

271 Department of Home Affairs. n.d. Birth Certificates. dha.gov.za/index.php/civic-services/birth-certificates

272 Ibid.

273 Ibid.

There is a provision for late registration of birth after the normal 30-day period, but this can be cumbersome and costly. There are two categories for late registration: between 30 days and 1 year, and after 1 year, with some additional requirements where the person being registered is over the age of 7. Fees may be charged for late birth registration. Late registrations involve increased documentary requirements and are more likely to involve interviews by a screening committee.²⁷⁴

The *Births and Deaths Registration Act* authorizes the collection of biometrics from both parent and child. There is also a draft policy to capture children's palmprint, footprint, or fingerprint, along with the fingerprints of the parents, which are verified online against the NPR, where possible.²⁷⁵

In 2018, the Department of Home Affairs proposed new regulations that would have required children born to non-South African parents to be issued with a confirmation of birth rather than a birth certificate (whether the parents were permanent residents, refugees, or otherwise present in South Africa); the idea was that this confirmation of birth could be presented to the relevant embassy so that these children could obtain a birth certificate from their country of nationality.²⁷⁶ Many civil society organizations objected to this proposal, asserting that it would violate South Africa's international law obligations as well as children's constitutional right to a name and a nationality from birth.²⁷⁷ The proposal was dropped. However, it seems to indicate a misunderstanding that South African birth certificates are evidence of South African citizenship, as opposed to a record of the facts pertaining to an individual's birth.

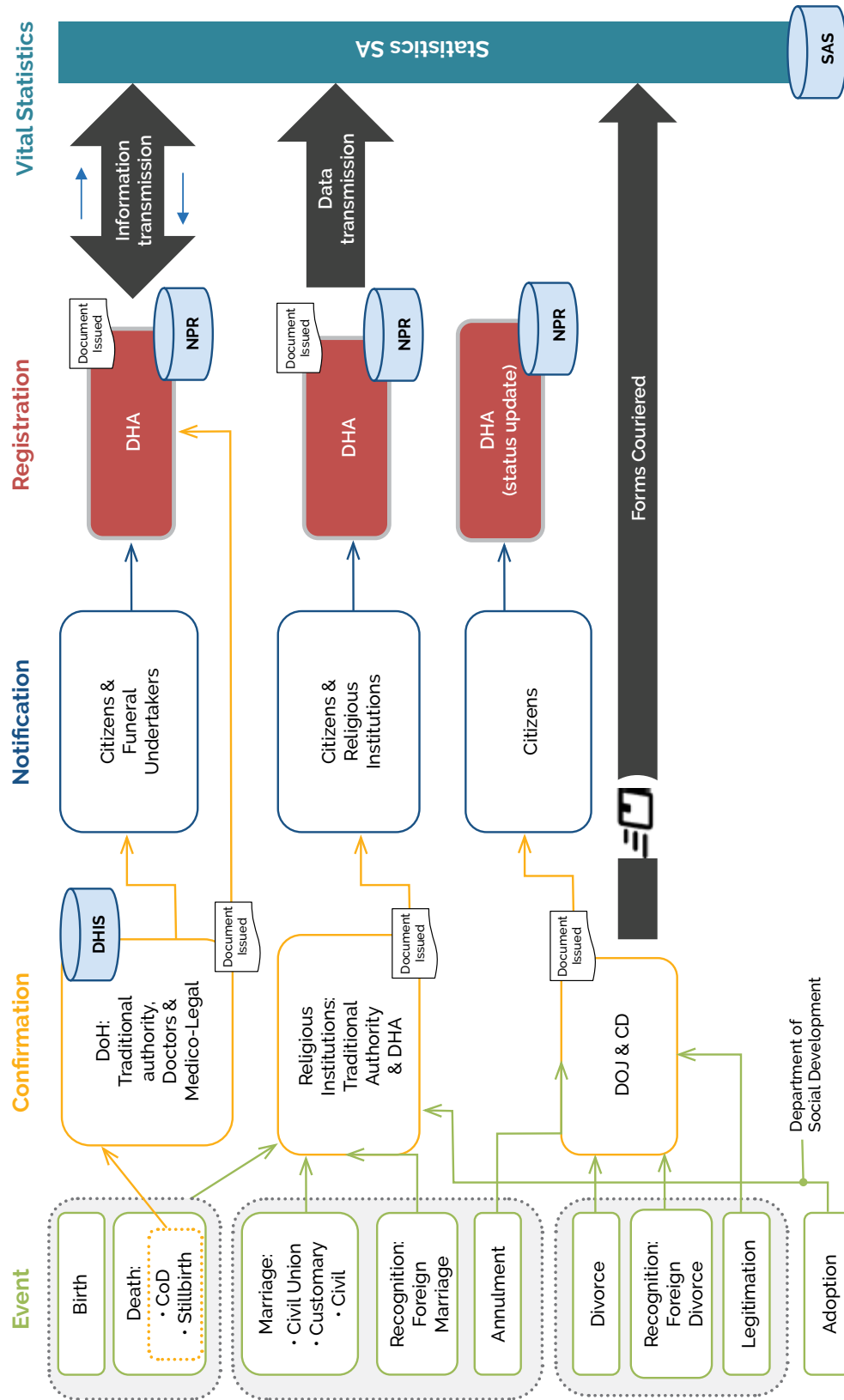
²⁷⁴ Ibid.

²⁷⁵ Harrisberg, K. 2021. Plan to Record All Babies' Biometrics Raises Privacy Fears. *News24*, 8 January. news24.com/news24/SouthAfrica/News/plan-to-record-all-babies-biometrics-raises-privacy-fears-20210108#:~:text=The%20Department%20of%20Home%20Affairs,biometric%20records%20could%20be%20leaked

²⁷⁶ The draft regulations were published in *South African Government Gazette* 41970. 12 October 2018. docs.google.com/viewerng/viewer?url=http://pmg-assets.s3-website-eu-west-1.amazonaws.com/181012draftreg-registrationofbirthsdeaths.pdf. See draft regs 1 (definition of confirmation of birth certificate, pp. 78).

²⁷⁷ Objections were made, for instance, by the Centre for Child Law, Lawyers for Human Rights, Scalabrini Centre of Cape Town, and University of Cape Town Refugee Law Clinic. Mabuza, E. 2018. Foreign-born children should not be deprived of birth certificates. *Sunday Times*, 15 November. timeslive.co.za/news/south-africa/2018-11-15-foreign-born-children-should-not-be-deprived-of-birth-certificates.

Figure 7. Current civil registration system in South Africa.



Source: Statistics South Africa. 2019.

One problem with birth registration that was recently addressed through litigation concerns the registration of the births of children born outside marriage. The regulations required that the notice of birth of a child born out of wedlock be made by the child's mother. A person who acknowledges paternity must submit an affidavit that states his relationship to the mother, and his fingerprints must be verified online against the NPR.²⁷⁸ The form requires the mother to confirm her consent to the acknowledgement of paternity.²⁷⁹ The law and regulations are silent on the procedure to follow if the mother, for example, dies in childbirth or does not carry out the duty to submit the notice of birth. In this way, they discriminate against the fathers of children born outside marriage. This provision of the law was ruled unconstitutional in May 2020 because it "implicitly bars the unmarried father of a child born out of wedlock from giving notice of the child's birth under his surname if the mother is absent"; the court held that an unmarried father must be permitted to register the birth of his child in his surname if he acknowledges paternity in writing under oath.²⁸⁰

Death registration, in the case of a death by natural causes, is the duty of any person who was present at the death or subsequently became aware of it, or "the person who has charge of the burial," which will usually be a funeral undertaker.²⁸¹ Funeral undertakers must register with the Department of Home Affairs for approval to participate in activities relating to the registration of deaths after demonstrating sufficient knowledge of the relevant legal requirements. This designation can be withdrawn if the funeral undertaker fails to comply with the law.²⁸² Any person who gives notice of a death must provide the certificate from the medical practitioner, if it is available; if no medical practitioner attended the deceased or examined the corpse, there are extra notice requirements.²⁸³

The birth and death registration processes are perceived as efficient, partly because they are managed by the Department of Home Affairs, which has offices throughout the country. Registration is also well incentivized, as a death certificate is needed to access survivor benefits and a birth certificate is required to access the Child Support Grant.

Although South Africa has not yet formally incorporated medical institutions into its law on civil registration, the Department of Home Affairs works closely with the Department of Health to share information and best practices to combat fraud in the process of issuing birth and death certificates and to improve data on causes of death. The process of setting up birth registration points in health facilities is also underway.²⁸⁴

278 Regulations on the Registration of Births and Deaths, 2014, reg 12.

279 Annexure 1A to the regulations.

280 *Centre for Child Law v Director-General: Department of Home Affairs and Others* (CA 319/2018) [2020] ZAECGHC 43. 9 May 2020. saflii.org/za/cases/ZAECGHC/2020/43.html

281 *Births and Deaths Registration Act 51 of 1992*, ss 4, p. 14.

282 *Ibid.*, s. 22A; Regulations on the Registration of Births and Deaths, 2014, reg 29.

283 *Births and Deaths Registration Act 51 of 1992*, s. 14; Regulations on the Registration of Births and Deaths, 2014, regs 21(1)(b), 22(1)(b)).

284 World Bank Group and International Bank for Reconstruction and Development. South Africa: ID Case study, p. 8. According to this source, "The collaboration between the two departments was formalized in February 2010, when an Intergovernmental Protocol was signed based on the *Intergovernmental Relations Framework Act* (Act n°13 of 2005)."

In the past two decades, South Africa has made remarkable progress with registration of births. According to Statistics South Africa, in 2019 the birth registration rate was 88.6 percent, and 78 percent of births were registered within 30 days. The key incentive to register is that newborns and their families have access to child grants once the birth has been registered; improved access to registration facilities and increased public awareness about the benefits of registration are also cited as contributing factors.²⁸⁵ Death registration stood at 96 percent in 2019, with 72.5 percent of deaths being registered within the mandated 72 hours.²⁸⁶

Marriage registration is compulsory under the various laws that cover different kinds of marriage,²⁸⁷ but divorce registration is not yet well integrated into the civil registration system.²⁸⁸ The Department of Home Affairs has reportedly instituted an SMS system (mobile messaging) whereby persons can check the record of their marital status by sending their ID number to a specified SMS line.²⁸⁹

Identity cards

The current governing law is the *Identification Act 68 of 1997*, supplemented by Identification Regulations, 1998,²⁹⁰ and administered by the Minister of Home Affairs. The Act establishes the National Population Register, which covers only South African citizens and permanent residents.²⁹¹

The identity card is mandatory from age 16. Citizens and permanent residents are required to apply for an identity card within 30 days of reaching age 16. A peace officer (such as a member of the police) can ask anyone who appears to be over age 16 to produce his or her identity card; if he or she does not have one, the peace officer can give him or her a written request to apply for an ID within seven days. Failure to comply with such a request is a criminal offence punishable by a fine or imprisonment for up to 12 months. Temporary ID certificates are issued upon receipt of an application for an ID card and may be sent by mail.

285 See generally *ibid.*; Dunning, C., Gelb, A. and Raghavan, S. 2014. Birth Registration, Legal Identity, and the Post-2015 Agenda, p. 8. Center for Global Development, CGD Policy Paper 046. cgdev.org/publication/birth-registration-legal-identity-and-post-2015-agenda

286 See Maluleke, R. 2019. South Africa's Progress in Civil Registration. Presentation to the 5th Annual Meeting of the ID4Africa Movement. id4africa.com/2019_event/presentations/Inf1/1-Risenga-Maluleke_Statistics-SA.pdf

287 Civil marriages between persons of the opposite sex are covered by the Marriage Act 25 of 1961. Civil marriages and civil partnerships (collectively referred to as civil unions) between two people of the same or opposite sexes are covered by the *Civil Union Act 17 of 2006*. Customary marriages concluded under the traditions of Indigenous groups are covered by the *Recognition of Customary Marriages Act 120 of 1998*.

288 The *Divorce Act 70 of 1919* is silent on registration. The Department of Justice and Constitutional Development is responsible for record keeping in respect of divorces and annulment, but Statistics South Africa reports that this data is not linked to the Department of Home Affairs records of marriages. Statistics South Africa. 2019. Marriages and Divorces 2017, p. 2. statssa.gov.za/publications/P0307/P03072017.pdf

289 Western Cape Government. 2019. Check Your Marital Status. westerncape.gov.za/service/check-your-marital-status

290 Identification Regulations, 1998 (Government Notice R978 of 1998, *Government Gazette* 19098 of 31 July 1998), as amended.

291 *Identification Act 68 of 1997*, s. 3.

Replacements can be issued if an ID card or a temporary ID certificate is damaged, lost, or stolen, when a person's particulars have been amended or changed, or if their citizenship status has changed.

Civil identification information and attributes of South Africans and permanent residents are stored in a National population register (NPR) that bears some likeness to the register established by the 1950 *Population Act* and other legacy registers.

The following information is collected in terms of the *Identification Act*:

- (a) Identity number;
- (b) Surname, full forenames, gender, date of birth, and place or country of birth;
- (c) From age 16, ordinary place of residence and postal address;
- (d) If the person is a South African citizen by naturalization or registration²⁹² rather than by birth or descent, the dates of acquiring citizenship and details about the date of entry into South Africa and the country of citizenship;
- (e) Particulars of marital status and of any marriage by that person;
- (f) From age 16, a recent photograph;
- (g) From age 16, fingerprints;
- (h) Particulars concerning passports and travel documents issued;
- (i) Particulars of his or her death or permanent departure from South Africa, and the corresponding cancellation of his or her identity card as required; and
- (j) Any other particulars determined by the Minister by notice in the *Government Gazette*.

The identity card itself contains the following information:

- (a) The holder's identity number;
- (b) The holder's surname, full forenames, gender, date of birth, and place or country of birth;
- (c) For citizens other than those by birth or descent, the dates of acquiring citizenship and details about the date of entry into South Africa and the country of citizenship;
- (d) A recent photograph, which must be taken without any headgear or veil, unless the director-general has exempted this person or a relevant category of persons from this requirement;
- (e) The holder's thumbprint; and
- (f) Any other particulars from the population register determined by the Minister by notice in the *Government Gazette*.

²⁹² Citizenship by registration was covered by s. 8 of the *South African Citizenship Act 44 of 1949*. This provision was repealed by amending Act 69 of 1962. The entire law on citizenship was subsequently replaced by the *South African Citizenship Act 88 of 1995*. Registration as an avenue to citizenship no longer exists.

Refugees are also issued with ID cards. Once a person has acquired refugee status, he or she receives a certificate of recognition of refugee status. His or her dependents also receive this document.²⁹³ Any refugee who is 16 years of age or older must apply immediately for an identity card or document "similar to a South African identity card or document."²⁹⁴ According to the Department of Home Affairs website, this application must be made at any Refugee Reception Office within 15 days of being granted refugee status.²⁹⁵ The ID application must be submitted with a copy of the certificate of recognition of refugee status and the same biometrics required for a national ID card for citizens and permanent residents.²⁹⁶ There is no fee for the initial ID card, but a fee is charged for replacement of a lost, stolen, or damaged document.²⁹⁷

The government began to roll out new smart ID cards in 2013, issuing these cards to new applicants as well as gradually reissuing them to current ID holders. ID holders were invited to Home Affairs offices in stages, based on their date of birth.²⁹⁸

Data protection

The Protection of Personal Information Act 4 of 2013 (POPI) restricts the processing of personal information. Personal information relevant to the CRVS and ID context includes information relating to an individual's race, gender, sex, pregnancy, marital status, national, ethnic or social origin, age, language, and birth, as well as any identifying number assigned to that person or biometric information of the person. It can, in some circumstances, include the person's name. Race or ethnic origin and biometric information are included in the category of special personal information, which is accorded a greater degree of protection. Processing includes the collection, organization, storage, updating, retrieval, and dissemination of information, among other processes.

CRVS and ID data are not strongly affected, since processing of personal information is allowed where it is "necessary for the proper performance of a public law duty by a public body"²⁹⁹; the processing of information about race or ethnic origin (which can often be revealed by a name) is permitted where this is essential to identify data subjects³⁰⁰; and the processing of biometric information is allowed where the information was obtained in accordance with the law.³⁰¹ Nevertheless, the basic principles of data protection set out in the law appear to apply to information collected for civil registration and identification.³⁰²

293 *Refugees Act 130 of 1998*, s. 27(a); Refugee Regulations, 2018, reg 17. The certificate is valid for four years and can be renewed.

294 *Refugees Act 130 of 1998*, s. 30; Refugee Regulations, 2018, reg 18.

295 Department of Home Affairs. 2020. Refugee Status & Asylum.

dha.gov.za/index.php/refugee-status-asylum

296 Refugee Regulations, 2018, reg 18(2).

297 *Ibid.*, reg 18(4); Department of Home Affairs. Refugee Status & Asylum.

298 South African Government. 2020. Smart Identity Document (ID) Card Roll-out.

gov.za/about-government/smart-identity-document-id-card-roll-out

299 *Protection of Personal Information Act 4 of 2013*, s. 11.

300 *Ibid.*, s. 29.

301 *Ibid.*, s. 33.

302 Exclusions from the Act are set out in ss 6 and 7, but these do not appear to cover CRVS and ID activities.

The *Promotion of Access to Information Act 2 of 2000* (PAIA) supersedes the more detailed provisions on access in the *Births and Deaths Registration Act 51 of 1992* and the *Identification Act 68 of 1997*.³⁰³ The Department of Home Affairs Manual on access to information under PAIA provides the guidance reproduced below on the confidentiality or accessibility of various forms of personal information that it holds. Details about marital status are treated as being non-confidential (probably to aid in the prevention of bigamy), while other personal information is considered confidential.

Table 15. Overview of access to information.

Subject of records	Category/description of records	Status and Access
Births	Application for birth registration and supporting records	<ul style="list-style-type: none"> • Confidential • Request in terms of PAIA
Identity documents	Application for ID and supporting records	
Passports	Application for passport and supporting records	
Citizenship	Application for citizenship by naturalization, resumption of citizenship, and supporting records	
Marriages	<ul style="list-style-type: none"> • Register of marriage officers and designations • Marriage register (civil marriages and civil unions) 	<ul style="list-style-type: none"> • Non-confidential • Voluntary
Adoptions	Register of adoptions	<ul style="list-style-type: none"> • Confidential • personal requester/next-of-kin
Deaths	<ul style="list-style-type: none"> • Register of deaths and death certificates • Particulars relating to registered deaths 	

Source: Department of Home Affairs, *PAIA Manual*, 2nd ed. (2013), p. 8.

dha.gov.za/images/Documents/DHA%20PAIA%20MANUAL%2004%202013.%20LOCKED.doc

2020: Reacting to the COVID-19 pandemic

The president of South Africa declared a state of disaster on 15 March 2020.³⁰⁴ Regulations were amended to impose a nationwide lockdown beginning on 26 March 2020, initially set to last until midnight on 16 April 2020 but later extended until midnight on 30 April 2020.³⁰⁵ New regulations issued on 29 April 2020 established a detailed framework of five alert levels, with Level 5 being the stage with the strictest measures to contain the spread of the virus.³⁰⁶

South Africa has both a *State of Emergency Act* and a *Disaster Management Act*, but neither refers to or provides for the business continuity of the civil registry of the population register and issuance of vital event certificates or identity cards.

³⁰³ *Promotion of Access to Information Act 2 of 2000*, s. 6. The Acts referred to do not appear in the Schedule referenced in this section, meaning that they are superseded.

³⁰⁴ Government Notice 313, *Government Gazette* 43096. 15 March 2020.

³⁰⁵ Government Notice 398, *Government Gazette* 43148. 25 March 2020.

³⁰⁶ Government Notice 480, *Government Gazette* 43258. 29 April 2020.

During the initial stages of the 2020 COVID-19 lockdown (level 5), the Department of Home Affairs provided only limited services, such as the issuance of temporary identity certificates and death certificates and the reissuance of birth certificates for people who had lost or misplaced documents.³⁰⁷

As restrictions eased (level 4), the Department next expanded its CRVS and ID services as follows: issuing uncollected IDs and temporary identity certificates, registering births and deaths (excluding late birth registrations), and reissuing birth and death certificates.³⁰⁸ During the next phase (level 3), the Department added (by appointment) marriage services and requests for late registration of birth.³⁰⁹ Asylum and refugee services were suspended through these stages, with all asylum seekers' permits that had expired or were set to expire during the national state of disaster being deemed to have been extended.³¹⁰

Birth registration services, usually offered at the medical facility where the child is born, were not operational during the level 5 lockdown. Even though birth registration was one of the first services to resume after the most restrictive lockdown period ended, it was estimated that there was a backlog of nearly 100,000 children born during the lockdown without birth certificates. This was particularly problematic during the period when families were feeling the economic impact of COVID-19, as a parent cannot access a child support grant for a child whose birth is not registered. (A Department of Home Affairs official stated that the South African Social Security Agency allows children to be registered for a grant for three months while a birth certificate is pending, but this was not specified in the relevant regulations.³¹¹)

If the temporary suspension of services resulted in a late birth registration after the usual 30-day deadline, parents were allowed to register their children without any of the additional requirements that usually apply to late registration. The Department of Home Affairs was reportedly geared up for increased working hours to address the backlog once birth registration resumed.³¹²

307 SA News. 2020. Home Affairs Services Available during Lockdown, 31 March.

sanews.gov.za/south-africa/home-affairs-services-available-during-lockdown

308 Government Notice R.518, *Government Gazette* 43301. 9 May 2020. Regulation 17D.

309 Department of Home Affairs. 2020. Additional Services in Level 3 Lockdown. 01 June. dha.gov.za/index.php/statements-speeches/1347-additional-services-in-level-3-lockdown; Government Notice n°664 of 10 June 2020 (GG 43420). Regulation 17E.

310 ENCA. 2020. Lockdown Level 3: Home Affairs Services Revealed, 29 May. enca.com/news/lockdown-level-3-home-affairs-services-revealed

311 Social grants are distributed under the *Social Assistance Act 13 of 2004*. Regulation 11 of the Regulations relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in respect of Eligibility for Social Assistance, issued in GN R898 of 2008 as amended, states that an application for a social grant must include an identity document of the applicant and of his or her spouse and, in the case of a child support grant, a care dependency grant, or a foster child grant, an identity document or a valid birth certificate of each child for whom an application for a social grant is made.

312 Zuzile, M. 2020. Lockdown Leaves Thousands of Newborns without Birth Certificates. *Sunday Times*, 15 May. timeslive.co.za/news/south-africa/2020-05-15-lockdown-leaves-thousands-of-newborns-without-birth-certificates

Chapter summary

In recent decades, South Africa has had to come to terms with disparate and discriminatory registration systems. After the end of apartheid in 1994, the government had to integrate records from various homeland home affairs departments into one centralized register. Integrating civil registration with civil identification and making a link to providing social services and benefits has boosted enrolment and promoted inclusion.

Of the four countries examined in this paper, South Africa is the only one that has not yet formally integrated the role of health facility reporting into birth and death registration, even though cooperation and data sharing take place between the civil registration authorities and the health sector.

South Africa seems somewhat less generous than the other countries studied in the provision made for stateless persons, particularly in practice. A detailed look at how the civil registration offices handle cases where documentation is lacking was beyond the scope of this study.

The frequent amendments to the law on citizenship requirements indicate that this is an area that is still somewhat politically unsettled.

Identity cards are mandatory for citizens and permanent residents from age 16, and refugees are required to apply for similar ID cards. The cards contain information about citizenship as well as other personal information, but in contrast to South Africa's painful history, there is no indication of race on the identity card, nor is such information encoded in the ID number any longer. A rollout of smart cards is in process.

South Africa has a relatively new legal framework for both data protection and access to information. Civil registration and identification data are treated as confidential, except for information about marriage.

South Africa was particularly hard hit by COVID-19. Although the country kept some essential civil registration services operating during periods of lockdown, the situation resulted in a backlog of birth registrations — and the crisis has not yet come to an end.

Overall, the country's social, economic, and political stability showed a weakening trend even prior to the 2020 pandemic, with South Africa's fragility being exacerbated by the impact of the pandemic.³¹³ This could make the social benefits that depend on birth registration and identification even more important in future.

313 Messner de Latour, J.J. et al. Fragile States Index Annual Report 2019, p. 9.

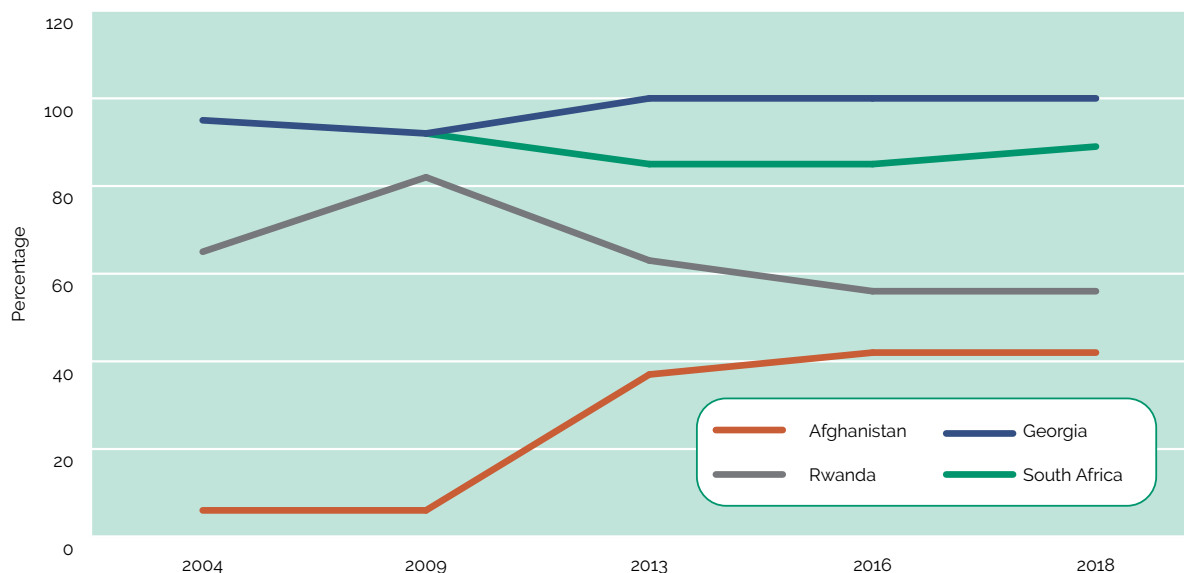
Conclusions

A well-functioning identity management system that is capable of universally registering all vital events — specifically birth registration and issuance of birth certificates to every child born in the country — must be based on a comprehensive legal framework for identity management, strong institutions to provide services and safeguard records, and dependable and secure technology that is appropriate for the purpose and environment.

In spite of Afghanistan's, Georgia's, Rwanda's, and South Africa's apparent and significant progress in improving the legislative and regulatory framework to ease registration and promote inclusion, there are still challenges to fully implement modernization efforts. Changing laws is a resource- and time-consuming effort, and updating laws to keep pace with technological developments is almost impossible. However, the four countries have been updating the laws on establishing legal identity through facilitating birth registration, at least of citizens and legal residents, in line with international recognition of the importance of the trustworthiness of breeder documents. This has put their civil registration systems on a stronger and more stable footing.

Civil registration coverage and systems

Figure 8. Comparison of birth registration rates.



Source: UNICEF, *State of the World's Children (1999–2018)*. [unicef.org/reports/state-of-worlds-children](https://www.unicef.org/reports/state-of-worlds-children)

Rwanda reports that it has arrested the downward trend evident in the table above by means of law reforms and public awareness campaigns; the National Institute of Statistics of Rwanda estimated that birth registration for 2019 was 87 percent countrywide, with an insignificant difference between male and female registration rates.³¹⁴

Other sources paint a somewhat different picture of the South African situation that shows lower past rates and thus more dramatic recent increases. According to one secondary source, South Africa reported a rise in birth registration rates in the first year of life from 24 percent in 1991 to 95 percent in 2012.³¹⁵ Statistics South Africa points to a significant improvement in the timely registration of births (within 30 days) in the 5-year period from 2014–2018, rising from 60.1 percent in 2014 to 79.6 percent in 2018.³¹⁶

The overall statistical snapshots also disguise local differences. For instance, the Afghanistan Living Conditions Survey 2016–2017 reported that the births of less than 30 percent of all children under age 5 have been registered, representing 60.9 percent of children under 5 in urban areas, compared to 22.4 percent in rural areas and 10.4 percent of Kuchi (nomad) children.

These discrepancies in statistics show the difficulty of accurately measuring civil registration rates. The impact of COVID-19 in 2020 is likely to add further complications to statistical measurements, particularly tendencies toward timely birth registrations.

The integration of notification of vital events from the health sector to the civil register has been an important factor in achieving universal birth registration in Georgia, which also attributes its high registration rates to the linking of birth registration to both “carrots,” in the form of several forms of social benefits, and “sticks,” in the form of fines for failure to register a child’s birth, as well as the involvement of reporting by medical facilities.³¹⁷ It is possible to register newborns in some of the bigger hospitals in South Africa, but the most important incentive toward achieving high birth registration rates is linked to the need for a birth certificate to obtain support from the universal child grant. Rwanda’s diminishing registration rates over recent years may be linked to increasing bureaucratization of registration procedures. Afghanistan has seen an important increase in birth registration in spite of dealing with extremely difficult circumstances, while the general challenges of governance probably continue to contribute to the country’s relatively lower registration rates. One recent improvement is the inclusion of the mother’s name on the birth registration record and birth certificate. On the other hand, the involvement of health

314 National Institute of Statistics of Rwanda. 2019. Rwanda Vital Statistics Report 2019, xv. statistics.gov.rw/publication/rwanda-vital-statistics-report-2019

315 Dunning, C. et al. Birth Registration, Legal Identity, and the Post-2015 Agenda, p. 8.

316 Statistics South Africa. 2019. More than 1 Million Births Registered in 2018. statssa.gov.za/?p=12586

317 UNICEF. 2016. Social Assistance Description and Recommendations 2014–2016: Analysis of Social Benefits/Assistance Provided to the Population of Georgia by Central and Municipal Governments, p. 26. cgdev.org/publication/birth-registration-legal-identity-and-post-2015-agenda. See also Government of Georgia. 2020. Measures Implemented by the Government of Georgia Against Covid-19: Report, p. 39. gov.ge/files/41_76497_133739_COVIDRESPONSEREPORTGoG_ENG.pdf; and United Nations. 2019. Universal Periodic Review Mid Term Report Georgia, Recommendation 117.87. lib.ohchr.org/HRBodies/UPR/Documents/session23/GE/UPR2ndCycle_midterm.pdf

facilities in birth registration has not produced as dramatic an increase in rates in Afghanistan as elsewhere because so many births take place at home.³¹⁸

Updating the efficiency and functionality of institutions to align with the need for timely registration of vital events is another governance challenge, particularly in countries emerging from conflict or adverse conditions. In their report, *Institutions Taking Root: Building State Capacity in Challenging Contexts*, Barma et al. posit that “building and operating successful institutions is a perennial and long-term challenge for governments, even under ideal circumstances.”³¹⁹ While they do not discuss civil registries or the four countries highlighted in this study, their description of the complexities of institution building does apply in the sense that “this challenge [institution building] is compounded by the volatile conditions found in fragile and conflict-affected settings (FCS), where human security, social cohesion, political stability, and economic activity have been dislocated.”³²⁰

The countries in this study are among those that mandate a primary, core, or legal identity that is anchored in national legislation as a prerequisite to access rights, benefits, and civic responsibilities offered by the respective states. One commonality of the four countries is that civil registration and civil identification are located in the same institution. This can improve efficiency and ease information exchange (verification of identities), which improves services to customers. Ideally, activities between civil registration and civil identification would be synchronized to avoid duplication of records or biographic errors.

One concern for Afghanistan, Rwanda, and South Africa was the weaker state of the systems for death registration, with accurate death registration being vital to reliable identity management. The sustained increase of registration of vital events in Georgia is due to easy access to the civil registry in the community centres, electronic registration services (one-stop shop), and links with social benefits and service through the same portal. Death registration systems are often less thoroughly analyzed than systems for birth registration, but they are flip sides of the same coin. Positive practices for death registration include clear legal duties for such registration, the involvement of medical institutions (as is the trend in birth registration), links between death registration and burial (or other disposal of the body), and legal provisions for declaring missing persons dead after an appropriate time period. A secure and verifiable legal identity requires solid birth and death registration.

For governments, one advantage of an enhanced information system is that it facilitates service provision. Another advantage is the potential for a track-and-trace structure that could be extremely useful during a pandemic to track the spread of the infection and/or administration of vaccines. The downside of integrated systems is the risk that registration systems can be used for surveillance — or that some segments of the population may fear this, whether or not it is the case. This is a concern particularly in situations where there has been past conflict rooted in race, ethnicity, citizenship, or other affiliations that might be revealed in the civil registration process.

318 A recent survey reported that almost half (49.2 percent) of all births take place at home. Central Statistics Organization. *Afghanistan Living Conditions Survey 2016–17*, p. 207.

319 Barma, N.H. et al. (eds). 2014. *Institutions Taking Root: Building State Capacity in Challenging Contexts*, p. 1. Washington, D.C.: World Bank.

320 Ibid.

Legal identities for different categories of persons

In the context of constructing the foundations for legal identity in post-conflict situations, we have focused on the legal aspects of providing and acquiring a legal identity for all individuals in the country: citizens, residents and refugees, the stateless, and people without documents. We have also considered the protection of personal data, an issue that is gaining importance as more and more registers become electronic and thus more vulnerable to being widely compromised.

As mentioned above, the respective laws are fairly favourable for citizens and legal residents. The situation for refugees, stateless individuals, and people without documents is more complicated, although every country examined gives some degree of special attention to persons in these categories.

For instance, there is no special route to citizenship for refugees in Afghanistan and no specific law on this issue,³²¹ although there is a Ministry of Refugees and Returnees. The Norwegian Refugee Council reported in 2019 that Pakistani refugees in Afghanistan were unable to formally enrol in Afghan schools because they lacked proof of Afghan citizenship.³²²

The more serious issue is the situation of Afghan refugees in other countries. UNHCR reported that there were almost 2.5 million registered refugees from Afghanistan in other countries in 2019, comprising "the largest protracted refugee population in Asia, and the second largest refugee population in the world" (after Syria).³²³

In addition to the recognition in the Constitution of the rights of aliens and stateless persons, Georgia has a Law on the Legal Status of Aliens and Stateless Persons (of 2014, with the most recent amendment in 2020); it also has a Law of Georgia on International Protection that addresses refugee status, humanitarian status, and temporary protection of refugees. This latter law states explicitly that a person who holds refugee or humanitarian status in Georgia may apply for citizenship by naturalization in the same way as any other person. Even before this law was enacted in 2011, UNHCR reported that virtually all refugees who opted for local integration had become naturalized Georgian citizens.

UNHCR rates Rwanda as having "one of the most generous asylum policies in the world." According to Law n°13/2014 relating to refugees, citizenship by naturalization is open to refugees, but the requirement that applicants must be engaged in "sustainable activities in Rwanda" could be a barrier for many. However, Rwanda's citizenship law has a strong *jus soli* element. Anyone born on Rwandan territory to non-Rwandan parents who are residing in Rwanda may acquire Rwandan nationality on application to the director-general of the National Identification Agency from age 18.

321 Afghanistan has yet to adopt a national refugee law or asylum framework. U.S. Department of State, Bureau of Democracy, Human Rights and Labor. Afghanistan: Country Reports on Human Rights Practices for 2019, s. 2-f; Azad, E. 2019. No Place to Call Home for Pakistani Refugees.

322 Azad, E. 2019. No Place to Call Home for Pakistani Refugees.

323 UNHCR. 2018. Afghanistan.

South Africa passed a Refugees Act in 1998, with regulations updated in 2018, but it is reportedly becoming increasingly difficult for refugees and stateless persons to obtain legal status and/or residency. It must be noted that notorious outbreaks of xenophobia aimed at non-South Africans in recent years have had an impact on the situation for refugees and stateless persons. In 2018, the Department of Home Affairs published proposed new regulations that would have required children born to non-South African parents to be issued with a confirmation of birth rather than a birth certificate. This proposal did not succeed, but it points to the negative environment that surrounds the registration of the births of non-citizens.

One issue that emerges when it comes to identity in post-conflict settings is how the present rules cannot be understood apart from the history that gave rise to them. For instance, Afghanistan's history makes its recent move to add ethnicity to identity documents understandable. On the other hand, indications of ethnicity or race on identity documents would be anathema in Rwanda or South Africa, where past conflicts centred on those issues and identification documents were enabling tools in those conflicts. Georgia has recognized documentation issued by authorities that it views as illegal for civil registration and identification to ensure that individuals are not disadvantaged by the larger political conflicts that are not yet entirely resolved.

Data protection

Data protection is about the appropriate and secure handling of information, in this case people's biographic records. The protection of a person's biographic data depends not only on an adequate legal framework, but also on the contextual relationship between agencies that have a need for verification of this person's identity. The four countries are at different stages with respect to the handling of personal information. Afghanistan does not have a data protection law in force. In Rwanda, a general data protection law has been drafted but not yet passed by Parliament. South Africa passed a Protection of Personal Information Act in 2013, which is now mostly in force. Georgia is the most advanced of the four countries with respect to data protection: the Constitution safeguards personal information in official records against disclosure without consent or legal authority based on the public interest.

Civil registration during the pandemic

Due to the ongoing COVID-19 pandemic, we decided to look at how the countries handle emergency situations such as a pandemic. All four countries have legislation in place concerning emergency situations, but this does not address pandemics or how to register vital events during such a situation. However, the governments of Georgia, Rwanda, and South Africa issued decrees declaring registration of vital events as an essential public service. These decrees provided instructions on how to register an event and obtain corresponding identity documentation. It was not possible to find this information on Afghanistan.

Overarching observations

Implicitly, the four countries are attempting to provide all citizens, residents, and refugees with a legal identity, but in practice, certain shortfalls may have implications for achieving Sustainable Development Goal 16.9.

Georgia is the most advanced in terms of providing legal identity for all, perhaps because of the maturity of the identity management system and administration. Rwanda has made substantial progress in the past decades in building up the identity management system as a common public good. South Africa has a good identity management system for citizens, but in practice, the situation for non-citizens seems to have become more challenging. Afghanistan continues to be in a state of conflict and is struggling to build institutions and a comprehensive identity management system. The recent steps toward increased acknowledgement of women in the relevant documentation is an important move toward inclusivity.

In an article from 2002, Stewart argues that the causes for intra-state conflicts "mainly consist of fighting between groups, group motives, resentments, and [group] ambitions."³²⁴ To address underlying conflict issues — in Afghanistan, decades of war; in Georgia, political issues; in Rwanda, genocide; and in South Africa, a system of apartheid — each country has had to confront the need to develop economic and social policies aimed at neutralizing or reducing the disputes that led to the conflict in the first place. One of the instruments to achieve equitable distribution of and access to services, benefits, and rights is ensuring the registration of vital events and issuance of identity credentials. If there is one lesson to be learned from all four countries, it is that putting trusted and trustworthy inclusive identity management systems in place to give everyone a legal identity in line with SDG 16.9 is a complex, complicated, long-term effort. Although systematic evidence of their respective administrative and institutional achievements to date is not available, it is obvious that the institutions in charge of civil registration and identity management in the four countries have recognized the importance of a secure, reliable legal identity and have made considerable efforts to improve service delivery to users. All four countries have made changes to their legal frameworks in the aftermath of their respective conflicts. Rwanda has made the most sweeping changes in an attempt to remove the ethnic divides that lay at the heart of the 1994 genocide; Georgia has achieved equal access to registration services for all.

For the civil register to reach its full potential as a key institution for public sector policy planning and to underpin state modernization and democratic governance, experience suggests that monitoring and auditing systems are needed to ensure accountability and transparency.

To fully implement and operationalize the existing legal framework to reach universal birth registration and the capacity to guarantee legal identity for all, governments must continue to build trust and confidence in the registration processes and procedures. One way to do this is to successfully link efforts with access to social services, benefits, and civic rights. The emphasis on the universality of birth registration processes needs to be strengthened to ensure that this right is accessible to non-citizens as well as citizens and to segments of the population that may be

324 Stewart, F. 2002. Root Causes of Violent Conflict in Developing Countries. *BMJ*, 324(7333), pp. 342345.
ncbi.nlm.nih.gov/pmc/articles/PMC1122271

socially or geographically marginalized: particularly refugees, internally displaced persons, and persons whose parents lack documentation of their own identity or citizenship.

Perhaps the most encouraging finding across all four countries examined in this paper is that all have recognized the importance of sound civil registration and legal identity, and all are actively giving attention to legal and operational improvements in their systems. It was also encouraging to see that the moves toward digitalization of civil registration and identity documentation and credentials have not distracted from attention to the underlying structures and processes necessary to ensure the reliability of legal identity.

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